Supreme Court, U.S.
FILED
991378 FEB 16 2000
OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

GERALD DEAN FOWLER,

Petitioner

v.

STATE OF ARKANSAS,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARKANSAS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

Charles M. Kester,
Counsel of Record
THE LAW OFFICES OF
CHARLES M. KESTER, P.L.C.
P.O. Box 184
Fayetteville, AR 72702
(501) 582-4600

8 pp

QUESTIONS PRESENTED

I. Whether this Court should grant certiorari to reverse the Arkansas Supreme Court's decision which is contrary to the decisions of this Court and which creates a conflict among the circuits and state courts of last resort that have consistently followed this Court to invalidate the Model Penal Code's "annoy" or "alarm" formula for the criminal offense of harassment as overbroad and void-for-vagueness.

II. Whether this Court should grant certiorari to reverse the Arkansas Supreme Court's decision which permits Mr. Fowler to be convicted of the offense of harassment for his peaceful attempts to proselytize others to his unpopular political and religious views and is contrary to the decisions of this Court, the circuits and state courts of last resort that have consistently held such convictions to violate the right to free speech, freedom of religion and freedom of association.

III. Whether this Court should grant certiorari to reverse the Arkansas Supreme Court's decision which allowed impeachment of Mr. Fowler and his witnesses with irrelevant evidence of their unpopular political and religious views and is contrary to the decisions of this Court and those of two state courts of last resort which have held such impeachment to violate an accused's right to free speech, freedom of religion and freedom of association.

TABLE OF CONTENTS

Questions Presented i

Table of Contents ii

Table of Authorities iv

Opinions Below 1

Jurisdiction 2

Constitutional and Statutory Provisions Involved 2

Statement of the Case 3

Reasons for Granting the Petition 15

I. This Court should grant certiorari to reverse the Arkansas Supreme Court's decision which is contrary to the decisions of this Court and which creates a conflict among the circuits and state courts of last resort that have consistently followed this Court to invalidate the Model Penal Code's "annoy" or "alarm" formula for the criminal offense of harassment as overbroad and void-for-vagueness. 16

II. This Court should grant certiorari to reverse the Arkansas Supreme Court's decision which permits Mr. Fowler to be convicted of the offense of harassment for his peaceful attempts to proselytize others to his unpopular political and religious views and is contrary to the decisions of this Court, the circuits and state courts of last resort that have consistently held such convictions to violate the right to free speech, freedom of religion and freedom of association. 22

III. This Court should grant certiorari to reverse the Arkansas Supreme Court's decision which allowed impeachment of Mr. Fowler and his witnesses with irrelevant evidence of their unpopular political and religious views and is contrary to the decisions of this Court and those of two state courts of last resort which have held such impeachment to violate an accused's right to free speech, freedom of religion and freedom of association. 24

Conclusion 28

Petitioner's Appendix 1a

TABLE OF AUTHORITIES

Cases **Page**

Bolles v. People, 189 Colo. 394, 541 P.2d 80 (1975) 19

Cantwell v. Connecticut, 310 U.S. 296 (1940) 22

Coates v. City of Cincinnati, 402 U.S. 611 (1971) 17, 18

Cordova v. City of Reno, 920 F. Supp. 135 (D. Nev. 1996) 21

Dawson v. Delaware, 503 U.S. 159 (1992) 25-27

Dawson v. State, 581 A.2d 1102 (1990) 26 n.6

Edwards v. South Carolina, 372 U.S. 229 (1963) 23

Fowler v. State, 339 Ark. 207, 5 S.W.3d 10 (1999) ..... passim

Fowler v. State, 67 Ark. App. 114, 992 S.W.2d 804 (1999) ..... passim

Kolender v. Lawson, 461 U.S. 352 (1983) 17

Kramer v. Price, 712 F.2d 174 (5th Cir. 1983) 18, 19

Langford v. City of Omaha, 755 F. Supp. 1460 (D. Neb. 1989) 21

Lionhart v. Foster, 1999 WL 977396, No. 99-2844 (E.D. La. Oct. 27, 1999) 18

Marks v. City of Anchorage, 500 P.2d 644 (Alaska 1972) 20

May v. State, 765 S.W.2d 438 (Tex. 1989) (en banc) 19

People v. DuPont, 107 A.D. 247, 486 N.Y.S.2d 169 (A.D. 1st Dept. 1985) 20, 20 n.4, 21

People v. Hickman, 988 P.2d 628 (Colo. 1999) (en banc) 19

People v. Norman, 703 P.2d 1261 (Colo. 1985) (en banc) 19, 19 n.3

Poole v. State, 524 P.2d 286 (Alaska 1979) 20

Schlager v. Phillips, 985 F. Supp. 419 (S.D.N.Y. 1997), *vacated on other grounds*, 166 F.3d 439 (2nd Cir. 1999) 21

State v. Bryan, 259 Kan. 143, 910 P.2d 212 (1996) 20

State v. Echelbarger, 54 Ohio Misc. 29, 376 N.E.2d 981 (Mun. Ct., Fostoria Co. 1977) 20

State v. Grayson, 546 N.W.2d 731 (Minn. 1996) 27

State v. Nelson, 155 N.J. 487, 715 A.2d 281 (1998), *State's petition for cert. denied*, -- U.S. --, 119 S. Ct. 890 (1999) 27

State v. Sanderson, 575 P.2d 1025 (Or. App. 1978) 20

Terminiello v. City of Chicago, 337 U.S. 1 (1949) 23

United States v. Abel, 469 U.S. 45 (1984) 27

United States v. Lemon, 723 F.2d 922 (D.C. Cir. 1983) 26

Constitutions, Statutes and Rules

28 U.S.C. 1257 2

A.C.A. 5-71-208 ..... passim

U.S. Const., Amend. I ..... passim

U.S. Const., Amend. XIV ..... passim

Secondary Sources

American Law Institute, *Model Penal Code and Commentary*, Part II (1980) 17

Petitioner's Brief in *Dawson v. Delaware*, 1991 WL 527601 ..... 26, 26 n.6

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

OPINIONS BELOW

The opinion of the Supreme Court of Arkansas on petition for review from the Court of Appeals of Arkansas, Pet. App. 2a-16a, is reported at 339 Ark. 207, 5 S.W.3d 10. The dissenting opinion of Arkansas Supreme Court Justices Smith and Glaze, Pet. App. 16a-21a, is found at 339 Ark. 222, 5 S.W.3d 18.

The opinion of the Court of Appeals of Arkansas, Pet. App. 22a-26a, is reported at 67 Ark. App. 114, 992 S.W.2d 804. The dissenting opinion of Arkansas Court of Appeals Judge Jennings, Pet. App. 26a-38a, is found at 67 Ark. App. 118, 992 S.W.2d 806.

The opinion, judgment and sentence of the Washington County Circuit Court, No. CR 98-132, issued on May 14, 1998, and entered on May 18, 1998, on appeal and trial de novo from the Springdale Municipal Court, is unreported.

The opinion, judgment and sentence of the Springdale Municipal Court, No. CR 97-5411, entered on January 22, 1998, is unreported.

JURISDICTION

The opinion and order of the Supreme Court of Arkansas, the state court of last resort, was entered on November 18, 1999. Pet App. 2a. This Petition for Writ of Certiorari is filed within the time allowed by this Court under Supreme Court Rules, Rule 13.1 and 13.2. The jurisdiction of this court is invoked under 28 U.S.C. 1257(a) and Supreme Court Rules, Rule 20.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides:

> Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part:

> . . . nor shall any state deprive any person of life, liberty or property without due process of law.

The Arkansas Harassment Statute, A.C.A. 5-71-208, provides, in pertinent part:

> (a) A person commits the offense of harassment if, with the purpose to harass, annoy, or alarm another person, without good cause, he:

(5) Engages in conduct or repeatedly commits acts that alarm or seriously annoy another person and that serve no legitimate purpose[.]

STATEMENT OF THE CASE

Mr. Fowler was charged with violation of the Arkansas Harassment Statute, A.C.A. 5-71-208(a)(5), which provides that a person "commits the offense of harassment if, with the purpose to harass, annoy, or alarm another person, without good cause, he . . . [e]ngages in conduct or repeatedly commits acts that alarm or seriously annoy another person and that serve no legitimate purpose[.]" Harassment is a Class A misdemeanor, A.C.A. 5-71-208(c), and Mr. Fowler was tried in the first instance before a municipal judge in the Springdale Municipal Court, where he was convicted and sentenced to a $500.00 fine, $75.00 court costs, and 365 days in jail with credit for time served, conditioned upon one year probation.

Mr. Fowler appealed from Springdale Municipal Court to the Circuit Court of Washington County, where he received a trial before a jury. Following this trial *de novo*, Mr. Fowler was again convicted of harassment and sentenced to the statutory maximum sentence of one year in jail and a $1000 fine.

Mr. Fowler appealed to the Arkansas Court of Appeals, which reversed the Circuit Court. The State sought review by the Supreme Court of Arkansas. The Supreme Court of Arkansas granted review and reversed the decision of the Arkansas Court of Appeals, in effect affirming the Circuit Court.

Although a few of the facts of this case (relating to the events of October 9, 1997) were the subject of a heated dispute at the trial level, the vast majority of the remaining facts were essentially undisputed. Viewing the disputed facts in the light most favorable to the State, as was done on appeal, these facts establish the following account, which is taken verbatim from the opinion of the Arkansas Supreme Court, Pet. App. 4a-6a, 339 Ark. at 209-211, 5 S.W.3d at 10:

The victim, Helen Wright, worked as a receptionist at the Jones Center in Washington County, Arkansas. She became acquainted with Mr. Fowler as a result of his regular visits to the Jones Center to attend meetings of a community-improvement group. Mrs. Wright testified that Mr. Fowler became very demanding of her during his visits to the center. Specifically, she testified that Mr. Fowler began talking to her on a daily basis about religion and that his unprovoked discussions with her interfered with the performance of her job. In September of 1997, she reported Mr. Fowler to security at the center, at which time two security officers spoke to him about his behavior.

On September 13, 1997, Mr. Fowler telephoned Mrs. Wright at her home and asked her to write down his name and phone number. She reported that incident to security officers at the Jones Center. The following week, Mr. Fowler telephoned Mrs. Wright at the Jones Center. After she informed a security officer about the call, he [a security officer] picked up the phone and told Mr. Fowler to leave Mrs. Wright alone. Five minutes later, Mr. Fowler arrived at the Jones Center and approached Mrs. Wright. At that point, she called the police. When they arrived, they spoke with Mr. Fowler and directed him not to harass Mrs. Wright. As a result of this incident, the Municipal Judge for the City of Springdale issued an order on October 7, 1997, that prohibited Mr. Fowler from approaching or communicating with Mrs. Wright or her family.

The charge of harassment that forms the basis of this appeal arises out of an incident that is alleged to have occurred on October 9, 1997. According to the testimony of Mrs. Wright and her daughter, they left the Jones Center at about 10:00 p.m. that day.

During their drive home, they stopped at a red light at the intersection of Mountain Road and Highway 265. Mr. Fowler pulled up beside them in a minivan and made eye contact with Mrs. Wright and her daughter. After the red light turned green, Mr. Fowler proceeded to follow Mrs. Wright and her daughter for several miles. Mrs. Wright testified that the minivan driven by Mr. Fowler followed her after she turned left onto Randall Wobbe Road. She then turned right onto Lowell Road and turned around at the first business. After she pulled back onto Lowell Road and headed south, she again saw Mr. Fowler as he traveled north on Lowell Road. She then turned back onto Randall Wobbe Road and traveled west toward Highway 71. After making a right turn onto Highway 71, she drove north for a distance of about two miles. At the intersection of Highway 71 and Apple Blossom Road, Mrs. Wright turned right onto Apple Blossom Road, and again turned around at the first business. She then drove back to the intersection of Apple Blossom Road and Highway 71. As she was preparing to turn and go back south on Highway 71, she again saw Mr. Fowler driving the minivan north on Highway 71.

This testimony by Ms. Wright and her daughter was controverted by several witnesses for the defense. Mr. Fowler testified that he attended a meeting at the Jones Center on October 9, 1997, left the center at approximately 9:45 p.m., and then arrived at a local pizza restaurant at about 10:10 p.m. or 10:15 p.m. His testimony was corroborated by three witnesses who attended the meeting that evening and also met him at the pizza restaurant. According to Mr. Fowler and his roommate, Mr. Fowler was at their home between the time he left the Jones Center and the time he arrived at the restaurant,

that is, between 9:45 p.m. and 10:10 p.m. or 10:15 p.m. On cross-examination by the State, Mr. Fowler and one of his alibi witnesses, Mr. Nick Herrington, were asked about the meetings they attended at the Jones Center and the beliefs they shared concerning the court's authority over them. The trial court ruled that these inquiries by the State were relevant to the issue of each witness's credibility. At the conclusion of the trial, the jury found Mr. Fowler guilty of the crime of harassment and imposed a sentence of one year in the Washington County Jail and a fine of $1000.

During the trial in Circuit Court, the state injected the political and religious beliefs of Mr. Fowler and his witnesses as a central issue. During voir dire, the State questioned potential jurors concerning their political beliefs and affiliations Pet. App. 38a. The State repeatedly alluded to the political and religious beliefs of Mr. Fowler and his witnesses during its opening statement. Pet. App. 38a-39a. During its case in chief, the State questioned its witness Stephen Cobb concerning Mr. Fowler's religious conversations which were characterized as "really bizarre," Pet. App. 42a, and derided as "his religious things." Pet. App. 42a. When defense counsel attempted to address this issue with cross-examination concerning Mr. Cobb's beliefs which were "a little bit different, maybe radically different than Gerald's," the State objected on the grounds of relevance and the trial court sustained the objection. Pet. App. 42a, *see also* Pet. App. 11a, 48a (court ruling permitting State to question defense alibi witness concerning his political and religious beliefs despite noting that "I really fail to see how it is relevant to these proceedings."). Despite the clear irrelevance of this evidence of political and religious beliefs and the trial court's twice ruling to this effect, the State was allowed to continue its questioning concerning Mr. Fowler's religious beliefs, eliciting a description of Mr. Fowler's allegedly harassing actions as "he would walk on a regular basis through the Jones Center on a daily basis on [sic] the evenings and just come to me and just talk religion, talk that I have

no idea what it was about, even like one incident was like to the seven, book of seven seals and it carried on where he'd tell me scriptures in the Bible[.]" Pet. App. 43a. After this description, the State asked a series of questions concerning these religious discussions. Pet. App. 43a. Ms. Wright took issue with the correctness of Mr. Fowler's religious beliefs, Pet. App. 43a, and derided Mr. Fowler's proselytizing as "asking silly questions." Pet. App. 43a.

Despite the recognized irrelevance of this evidence, the State was permitted to weave this theme throughout the trial over repeated defense objection. Again, as the Arkansas Supreme Court described, Pet. App. 6a-13a, 339 Ark. at 211-19, 5 S.W.3d at 12-16:

> After Mr. Fowler's testimony on direct examination, the State cross-examined:
>
> Q Let me ask you, do your meetings, do you have discussions or talk about or deal with government matters at your meetings?
>
> A No.
>
> Mr. Bryant: Objection, irrelevant, beyond the scope of direct examination.
>
> Mr. Franco: I think if I'm allowed to flush [sic] this out I'll try to be as absolutely brief as possible but I think that I can get to a point that will deal directly with his credibility.
>
> The Court: Well, I think if this goes to credibility then I'll permit it for at least the time being. Overruled.
>
> Continuing Cross-Examination by Mr. Franco:
>
> Q Do you deal with matters relating to the government?
>
> A No, sir, we deal with matters relating to constitutional documents.
>
> Q Okay, do these, do you have discussions regarding the authority that governments or more specifically courts have over you?
>
> A No, sir, we discuss citizen's rights.

Q All right. In the realm of dealing with the court system, more specifically the criminal justice system?

A Well, it's mainly the exercise of your rights, citizen's rights.

Q What are those citizen's rights?

A Well, that would be too much to enumerate.

Q Please answer the question?

Mr. Bryant: Your Honor, it's beyond me how this can have anything to do with the credibility of a witness.

The Court: Well, again, Counsel, I have addressed the objection. I'm going to permit it up to a point so overruled. Now, you may proceed.

Continuing Cross-Examination by Mr. Franco:

Q What are those citizen's rights which you deal with -- I'll narrow it for you, dealing just with the criminal justice system and the court system?

A Well, we don't confine it to that.

Q I want -- let's just confine the topic to that for purposes of your answering the question?

A Well, it's -- you know and I don't know if I can quote it exactly, one of your founding fathers said, vigilance, and I can't quote it exactly but vigilance is the exercise of freedom to keep a nation's citizens free so it's to make people aware of what the constitution is for and how that it is to work as a restraint against governmental abuses.

Q What governmental abuses?

A Well, I don't know, I feel strange you'd ask me that question as if you don't think there's ever been any governmental abuses.

Q Do you feel that you've ever been abused by the government yourself?

A I feel like that there has been an excess of it by the government, that and of course they're

discussing this every day in the newspapers and this is what the courts are for is to try to work out the differences of people's opinions as to what is correctly judicial and what is not.

Q That flag right there has gold stripes on it; is that correct?

Mr. Bryant: Objection, Your Honor, may I approach please?

The Court: You may.

Mr. Bryant: Your Honor, the only thing the Prosecutor is trying to do in this case is prejudice the Jury against my client because of his political beliefs. There's no way this has anything to do with the ability to tell the truth or not. This is an outrageous attempt on the Prosecutor's part to prejudice my client and I'd ask that he not be permitted to do that.

Mr. Franco: Throughout the entire prosecution of this matter Mr. Fowler has objected to the flag with gold stripes on it and stated it's military and doesn't have the authority over him, it's my understanding from his statement. I think if that's the belief here today I think it goes to, directly to the fact of if he thinks they have authority.

The Court: Well, you can narrow your question down to that particular issue which goes to credibility. I'm going to permit it but we need to narrow the scope of the inquiry and get on with it. All right. You may proceed.

By Mr. Franco:

Q What's the significance of the gold stripes on that flag right there?

A It shows that it's a military flag.

Q In your opinion, and?

A According to the studies that we have had, that's correct.

Q All right. What's that mean in your opinion if it's a military flag?

A Well, if -- now under, I'm quoting from the studies, all right.

Q Yes, sir, yes, sir? A U.S.C. § 1, I believe 4D, denotes the U.S. constitutional flag of America.

Q What type of flag is that supposed to be, what's the gold mean?

A It does not have a symbol on top.

Q The gold fringe means it's a military flag; is that correct?

A Yes, sir, according to army regulations, according to certain codes.

Q Is it your belief that if it's a military flag then there -- isn't it true that you're -- it's your belief that since we have military flag in the courtroom this is basically a military court and we don't have jurisdiction over you in this court, is that your belief?

A I understand that Reed versus Calvert says no U.S. citizen shall be tried in a military court.

Q Yes, sir?

A And President George Bush, and I don't remember the date right now, signed an executive order that all courts in the United States are military courts.

Q He did?

A He did.

Q Do you consider this to be a military court?

A I'm just telling you what the record is.

Q I'm asking do you consider this to be a military court?

A I don't know as I have an opinion. I'm telling you that's what I have read by executive order of a U.S. Supreme Court ruling.

Q One more question on this topic. Based upon your studies and the fact that's a military flag, you're not in the military; correct?

A Not now.

Q Do you feel that you are in the wrong court here today to be tried for the charges that have been brought against you?

A I'm here.

Q Do you feel by -- based upon your belief and your study that –

A Let me ask -- may I ask you a question?

The Court: Now wait a minute, wait a minute. This process is not going to work at all unless we follow some basic rules. Mr. Franco, you ask the questions and you respond to the questions if possible with either a yes or no and if you don't understand the question simply tell him and he will restate the question and maybe sometime before sunset this matter will come an end. Please try again to repeat the question and you just answer, you ask the question and you respond as briefly and succinctly as you possibly can hopefully with a yes or no and then we'll move ahead.

By Mr. Franco:

Q Based upon your study and your understanding of this executive order, do you feel that you are in the proper court yourself for the charges that have been filed against you?

A To the best of my study until I'm shown differently or can be proved differently I'm a U.S. citizen in one of the fifty states, I'm under the U.S. Constitution of America as a free citizen, I'm not in the military and if it's correct according to the study that's a military flag, that flag denotes what court I'm under in this room.

Q So you, based upon your study you believe this to be a military court?

A According to George Bush.

Then, on redirect by Mr. Bryant:

Q Gerald, are you nervous about being here today?

A I'm totally relaxed.

Q Even though you may have a disagreement about whether or not that particular flag is the proper flag to be displayed in a courtroom, do you fully accept -- I mean what's your thoughts about this Court's jurisdiction over you, do you accept that?

A Yeah, I have accepted it.

Q And what are your thoughts about the role of the Jury here today?

A I think that's a great American way.

Later in the trial, Mr. Nick Herrington was cross-examined by the State:

Q Your meetings out there, what type meeting is that?

Mr. Bryant: Object, Your Honor, beyond the scope of direct examination.

Mr. Franco: He said he was at the meeting. I think he opened the door.

The Court: Well, I really fail to see how it's relevant to these proceedings, Counsel. If you can tie it into something, I'll permit a few questions.

Mr. Franco: It's just like when we did Mr. Fowler, I'll get right to the point.

By Mr. Franco:

Q You notice the flag over there?

A Yes, sir.

Q What sticks out on that flag to you?

A A variety of things.

Q What about the gold fringe around the flag?

A Indicates military law.

Q What does that mean to you?

A It's not common law.

Q Okay, it's not common law?

A No, sir it's not.

Q The law that we're doing in court here today, the trial we have is a criminal trial?

A Yes, sir.

Q What type of law is this we're doing here today?

A That flag indicates military law.

Q In your opinion is this a military court?

A Not my opinion.

Q Whose opinion?

A Title 4, U.S. Code, Section 102, which defines the flag, Title 36, U.S. Code 71-73, which goes further into the flag, Army Regulation 840-10, that really gets into it, Chapter 8.

Q Do you believe that Mr. Fowler is in the right court today for the charges for, he's been charged with, a violation of state law—

Mr. Bryant: Your Honor, this is all very interesting.

The Court: Overruled, it goes to credibility. I'm going to permit it. Overruled.

By Mr. Franco:

Q You believe Mr. Fowler is in the correct court today based upon the flag that's here and he's charged with a crime under the laws of the State of Arkansas?

A How you define a crime—

Q The crime of harassment, he's charged with the crime of harassment?

A Well—

Q It's a yes or no question, do you believe he's in the right court?

A I don't know.

Q Do you -- you're here as a witness in this court today and I think you took an oath, you were sworn in; is that correct?

A Yes, sir.

Q Does the fact that you're under that flag, you don't -- let me back up just a second, you believe that that's the wrong flag to be in this courtroom, correct?

A We don't have a complete set of flags here, let's put it that way.

Q What other flag is missing then if that flag is flying?

A The American flag of peace means Old Glory is present, do you see it?

Q So we have the right flag?

A You don't have a complete set.

Q Based upon that do you believe that you're bound by the authority of this court here today?

A I'm a witness here.

Q Well, do you believe based upon your belief that Mr. Fowler is bound by the authority of this court?

A Yes, he's got an attorney.

Q No, let me restate my question. Do you believe that Mr. Fowler is bound by the authority of this court, that he comes under the authority of this court based upon what you have talked about, the flag and stuff—

Mr. Bryant: Your Honor, how is the witness supposed to testify as to what Mr. Fowler believes? I believe that's improper.

The Court: That wasn't the question. The question was does this witness believe that Mr. Fowler is bound by the authority of this court, which I assume goes to his belief in this system which to some extent has something to do with his credibility. I

think if he can narrow the issue to one of credibility I'm going to permit the inquiry and please, let's move along.

Mr. Franco: That's the last question I have, Your Honor, and that's exactly what I'm asking about.

By Mr. Franco:

A If he didn't believe he was bound he wouldn't be here.

Then, on redirect by Mr. Bryant:

Q Mr. Herrington, understand what it means to take an oath to tell the truth?

A Yes, sir.

Q Are you bound by that oath here today?

A Yes, sir.

After this evidence, the closing argument by the State extensively addressed Mr. Fowler's political and religious beliefs. Pet. App. 51a-52a. The defense also addressed these issues, arguing that "I think it was some attacks made on the credibility because they believed in a different flag and what not. Ladies and gentlemen, I contend that that's not an attack on credibility, that's an attack or persecution for having beliefs different than that of the State. There's not a law against that, that's the great thing living in this country, and don't, please, please don't go back into the juryroom and find Gerald Fowler guilty just because you don't like what he believes." Pet. App. 53a. The Arkansas Court of Appeals agreed and found impeachment with irrelevant evidence of abstract political and religious beliefs to be improper. This decision was rejected and reversed by the Supreme Court of Arkansas which held the impeachment was proper.

REASONS FOR GRANTING THE PETITION

This case presents two narrow issues. First, over defense objection, Mr. Fowler was convicted of violating the Arkansas Harassment Statute by engaging repeated acts that alarm or seriously annoy another person and that serve no legitimate purpose based, in part, upon the undisputed evidence of Mr. Fowler's efforts to

propagate his religious and political views. In affirming this conviction, Arkansas' court of last resort has interpreted and applied the Model Penal Code's "annoy" or "alarm" formula for the offense of harassment in an overbroad and vague manner that has been rejected overwhelmingly by other courts. Second, facts underlying the "repeated acts" were hotly disputed, and the State used irrelevant evidence of the unpopular political and religious beliefs of Mr. Fowler and one of his alibi witnesses to impeach their credibility, thereby violating Mr. Fowler's right to free speech, freedom of religion and freedom of association.

I. This Court should grant certiorari to reverse the Arkansas Supreme Court's decision which is contrary to the decisions of this Court and which creates a conflict among the circuits and state courts of last resort that have consistently followed this Court to invalidate the Model Penal Code's "annoyance" and "alarm" formula as overbroad and void-for-vagueness.

This Court has explained the void-for-vagueness doctrine in the following terms:

> As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of vagueness doctrine is not actual notice, but the other principal element of the doctrine – the requirement that a legislature establish minimal guidelines to govern law enforcement. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep that allows policemen, prosecutors and juries to pursue their personal predilections.

Kolender v. Lawson, 461 U.S. 352, 357-58 (1983) (internal quotations, modifications and citations omitted). Applying this doctrine, numerous statutes and ordinances employing the Model Penal Code "annoy" or "alarm" formula have repeatedly been struck down under the overbreadth and void-for-vagueness doctrines by this Court, the Fifth Circuit, the courts of last resort in several states, and numerous lower courts. Indeed, the courts of last resort in Colorado and Alaska have struck down statutes identical to A.C.A. 5-71-208(a)(5). The decision of the Arkansas Supreme Court permitting Mr. Fowler's harassment conviction to stand creates a split between these courts on this important issue affecting the interpretation of similar statutes in more than a dozen states and countless municipalities.

Mr. Fowler was convicted for violating A.C.A. 5-71-208(a)(5), which is based upon the "annoyance or alarm" formula found in the Model Penal Code disorderly conduct statute, and widely adopted in disorderly conduct and harassment statutes in more than a dozen jurisdictions. American Law Institute, *Model Penal Code and Commentary*, Part II, sec. 250.4, comment 5 (1980), *see also* sec. 250.2 and commentary. The drafters of the Model Penal Code recognized the significant vagueness and overbreadth problems with this particular section. *Model Penal Code and Commentary*, Part II, sec. 250.4, comment 6. In affirming Mr. Fowler's conviction under the Arkansas Harassment Statute for engaging in conduct or repeatedly committing acts that alarm or seriously annoy another person and that serve no legitimate purpose, the Supreme Court of Arkansas has created an important and unnecessary conflict with the decisions of this Court, and a split with the long line of circuit courts and state courts of last resort that have held that similar statutes relying upon the "annoy" or "alarm" formula are unconstitutionally vague and overbroad in violation of the First and Fourteenth Amendments.

The decision of the Arkansas Supreme Court is contrary to the decisions of this Court. This Court invalidated an ordinance using an identical "annoyance" formula in *Coates v. City of Cincinnati*, 402 U.S. 611 (1971). In *Coates*, this Court invalidated a city ordinance that made it a criminal offense for three or more persons to assemble on public sidewalks and conduct themselves in a manner which might

"annoy" passersby. *Coates*, 402 U.S. at 614. In reaching this result, this Court identified two fatal flaws to the "annoyance" formula. First, the term "annoy" is inherently vague. "Conduct that annoys some people does not annoy others. Thus, the ordinance is vague, not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all." *Coates*, 402 U.S. at 614. Second, the ordinance on its face and as judicially interpreted[1] "did not indicate upon whose sensitivity a violation does depend – the sensitivity of the judge or jury, the sensitivity of the arresting officer, or the sensitivity of a hypothetical reasonable man." *Coates*, 402 U.S. at 613. Although the Arkansas statute suffers these exact same infirmities, the Supreme Court of Arkansas simply glossed them over to affirm the harassment conviction of Mr. Fowler that was based upon his offensive religious proselytizing. Less than a month before the Supreme Court of Arkansas issued its decision, the United States District Court for the Eastern District of Louisiana relied extensively upon *Coates* to find La. Rev. Stat. § 14:103.2 unconstitutionally vague because of its use of the term "annoy." *Lionhart v. Foster*, 1999 WL 977396, No. 99-2844 (E.D. La. Oct. 27, 1999), at *4-*6.

Courts of appeals and state courts of last resort applying the law declared by this Court have overwhelmingly found statutes employing the identical "annoy" or "alarm" formula to be unconstitutionally vague and overbroad. In *Kramer v. Price*, 712 F.2d 174, 176-78 (5th Cir. 1983), the Fifth Circuit issued a writ of habeas corpus to a petitioner who was convicted under the Texas Harassment Statute, Tex. Penal Code Ann., Sec. 42.07,[2] on the grounds that the

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[1] Cases decided under the void-for-vagueness doctrine uniformly recognize that a state court of last resort may avoid a vagueness challenge by authoritatively interpreting an otherwise vague statute or ordinance in a manner that removes the vagueness. Although the Supreme Court of Arkansas has judicially limited other statutes, the Arkansas Supreme Court has failed to limit this statute despite a clear opportunity to do so in this case.

[2] The Texas Harassment Statute provided, in pertinent part, that "a person commits an offense if he intentionally: (1) communicates by telephone or in writing in vulgar, profane, obscene, or indecent language or in a course and offensive manner

statute's use of the terms "alarm" and "annoy" rendered that statute unconstitutionally vague. *Kramer*, 712 F.2d at 178.

In *May v. State*, 765 S.W.2d 438 (1989) (en banc), the Texas Court of Criminal Appeals followed *Kramer*, and (after the statute was amended) invalidated the same section of the Texas Harassment Statute for the same reasons listed in *Kramer*, explaining that "the inherent vagueness of the statute as it then existed [when the offense was committed], in attempting to define what annoys and alarms people, and its failure to specify whose sensibilities are relevant, causes it to be unconstitutionally vague." *May*, 765 S.W.2d at 440.

The Supreme Court of Colorado has repeatedly invalidated virtually identical statutes. In *People v. Norman*, 703 P.2d 1261 (Colo. 1985) (en banc), the Supreme Court of Colorado invalidated a Colorado harassment statute[3] that was identical to A.C.A. 5-71-208(a)(5), under which Mr. Fowler was convicted. *Norman* invalidated the statute because the terms "annoy" and "alarm" were unconstitutionally vague and overbroad, and these infirmities were compounded by the additional uncertainty added by the phrase "without any legitimate purpose." *Norman*, 703 P.2d at 1266-67. Likewise, in *Bolles v. People*, 189 Colo. 394, 541 P.2d 80 (1975), the Colorado Supreme Court struck down a similar section of the harassment statute for identical overbreadth reasons – the vagueness and breadth of the terms "annoy" and "alarm." *Bolles*, 189 Colo. 394, 541 P.2d at 82-83. The Supreme Court of Colorado relied upon and expanded *Bolles* as recently as ten days before the decision of the Supreme Court of Arkansas to strike down another Colorado statute as overbroad because of the breadth of the terms "harass," "alarm," and "annoy." *People v. Hickman*, 988 P.2d 628, 642-43 (Colo. 1999).

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and by his action intentionally, knowingly or recklessly annoys or alarms the recipient." *Kramer*, 712 F.2d at 176 (quoting Tex. Penal Code Ann. Sec. 42.07).

[3] The Colorado Harassment Statute provided in pertinent part that "a person commits the crime of harassment if, 'with the intent to harass, annoy, or alarm another person' such person [e]ngages in conduct or repeatedly commits acts that alarm or seriously annoy another person and that serve no legitimate purpose." *Norman*, 703 P.2d at 1266 (quoting 8 C.R.S sec. 18-9-111(1)(d) (1978)).

Likewise, in *State v. Bryan*, 259 Kan. 143, 910 P.2d 212 (1996), the Supreme Court of Kansas relied upon *Coates* and several other of these cases in a detailed linguistic analysis of a Kansas stalking statute to conclude that the terms "annoy" and "alarm" rendered that statute unconstitutionally vague. *Bryan*, 259 Kan. 143, 910 P.2d at 216-220.

The Supreme Court of Alaska has similarly struck down a disorderly conduct ordinance that used language identical to A.C.A. 5-71-208(a)(5) on vagueness and overbreadth grounds stemming from the "annoy" or "alarm" formula. *Marks v. City of Anchorage*, 500 P.2d 644, 652-53 (Alaska 1972). The Alaska court reaffirmed and relied upon *Marks* in *Poole v. State*, 524 P.2d 286 (Alaska 1979), to invalidate on these same grounds an Alaska disorderly conduct statute that employed the terms "disturbance or annoyance."

Lower state courts have followed the guidance from this Court, the courts of appeals and state courts of last resort, and have routinely struck down similar statutes using the "annoy" or "alarm" formula. In *City of Everett v. Moore*, 683 P.2d 617 (Wash. App. 1984), the Washington Court of Appeals held an ordinance identical to A.C.A. 5-71-208(a)(5) to be unconstitutionally vague and overbroad because of its use of the terms "alarm" and "annoy." The Court of Appeals of Oregon has also struck down an Oregon statute identical to A.C.A. 5-71-208(a)(5) on the grounds that the "annoy" or "alarm" formula rendered the statute unconstitutionally vague. *State v. Sanderson*, 575 P.2d 1025, 1027-28 (Or. App. 1978). Similarly, in *People v. DuPont*, 107 A.D. 247, 486 N.Y.S.2d 169 (A.D. 1st Dept. 1985), a New York appellate court held that a New York harassment statute[4] using the "annoyance or alarm" formula was unconstitutionally vague and overbroad. *DuPont*, 486 N.Y.S.2d at 177. In *State v. Echelbarger*, 54

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[4] The statute at issue in *DuPont* provided in pertinent part that a person committed a Class A misdemeanor when that person "with intent to harass, annoy, threaten, or alarm another person . . . 1. Communicates or causes a communication to be initiated by mechanical or electronic means or otherwise, with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm." *DuPont*, 486 N.Y.S.2d at 173 (quoting N.Y. Penal Law sec. 240.30).

Ohio Misc. 29, 376 N.E.2d 981, 982 (Mun. Ct., Fostoria Co. 1977), an Ohio court dismissed a criminal complaint based upon an Ohio disorderly conduct statute which used the terms "inconvenience, annoyance or alarm" on the grounds that the statute was unconstitutionally vague.

Federal district courts have likewise followed the direction of this Court to invalidate the "annoy" or "alarm" formula. The United States District Court for the Southern District of New York emphatically endorsed the *DuPont* decision in *Schlager v. Phillips*, 985 F. Supp. 419 (S.D.N.Y. 1997), *vacated on other grounds*, 166 F.3d 439 (2nd Cir. 1999). In *Cordova v. City of Reno*, 920 F. Supp. 135 (D. Nev. 1996), the United States District Court for the District of Nevada issued a writ of habeas corpus to a petitioner who was convicted of violating a Reno Municipal Ordinance 8.22.040, which made it a criminal offense, in a public place, to engage in "conduct having a tendency to annoy, insult or disturb offensively any person passing or being therein." *Cordova*, 920 F. Supp. at 137. The district court struck down the ordinance on two bases: (1) that "the ordinance is void for vagueness" because of its use of the term "annoying," among others, and (2) that "the ordinance trenches impermissibly upon several constitutionally protected rights, namely the rights to free assembly and association guaranteed by the First and Fourteenth Amendments." *Cordova*, 920 F. Supp. at 138-39. Likewise, in *Langford v. City of Omaha*, 755 F. Supp. 1460 (D. Neb. 1989), the United States District Court for the District of Nebraska followed the Fifth Circuit in *Kramer* and found that four sections of an Omaha harassment ordinance, including a section virtually identical to A.C.A. 5-71-208(a)(5), were void for vagueness where the definition of the offense of harassment relied upon the terms "legitimate," "annoy" and "alarm." *Langford*, 755 F. Supp. at 1464.

As these cases make clear, the courts have long recognized and followed the principles of law established by this Court to strike down as overbroad and void-for-vagueness statutes and ordinances employing the same "annoy" or "alarm" formula employed in the Arkansas harassment statute. The decision of the Supreme Court of Arkansas is an aberration from this longstanding pattern which creates

a split among the circuits and state courts, and this Court should grant certiorari to resolve this split on an important issue of constitutional law which touches directly on harassment and disorderly conduct statutes of more than a dozen states and countless municipalities that have employed the "annoy" or "alarm" formula.

II. This Court should grant certiorari to reverse the Arkansas Supreme Court's decision which permits Mr. Fowler to be convicted of the offense of harassment for his peaceful attempts to proselytize others to his unpopular political and religious views and is contrary to the decisions of this Court, the circuits and state courts of last resort that have consistently held such convictions to violate the right to free speech, freedom of religion and freedom of association.

The First and Fourteenth Amendments of the United States Constitution protect individuals like Mr. Fowler from criminal sanctions while exercising their rights to free speech, freedom of religion and freedom of association. There is no purer form of First Amendment activity than a political and religious discussion (even if uninvited or obnoxious) by a religious or political activist concerning religious or political issues.

Courts confronting similar situations, including many of those courts cited in section I, *supra*, have unanimously held that the fundamental rights to free speech, to free assembly are violated by a criminal conviction for similar activities. As this Court stated in *Cantwell v. Connecticut*, 310 U.S. 296 (1940), where it unanimously reversed a religious evangelist's conviction of breach of the peace for proselytizing activities that highly offended his listeners:

> In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent

> in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

310 U.S. at 310, *see also Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). This principle was applied in *Edwards v. South Carolina*, 372 U.S. 229 (1963), where this Court reversed several convictions of breach of the peace based upon "boisterous", "loud" and "flamboyant" conduct which included a "religious harangue" and loud singing on the premises of the state capital. In reversing these convictions, this Court stated:

> The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views. "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest. . . . There is no room under our Constitution for a more restrictive view."

372 U.S. at 237-38 (quoting *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949) (modification and ellipses in original)). This is precisely what happened at the Jones Center. Mr. Fowler holds political and religious views that are not popular in the wake of the negative publicity concerning "militias" and related groups. Ms. Wright saw this man who wanted to discuss his political and religious views which,

although peaceful, non-violent and legal, were clearly outside the mainstream. These confrontations may well have been provocative and challenging to Ms. Wright. They may have been profoundly unsettling and disturbing to her. However, as this Court has repeatedly made clear in *Terminiello*, *Cantwell* and *Edwards*, they are not for that reason devoid of constitutional protection. At least one circuit court and a half dozen state courts of last resort have followed this Court's direction in similar factual situations. The decision of the Arkansas Supreme Court which fails to abide by this principle of law is an aberration that creates a conflict with these decisions, and should be corrected by means of certiorari.

III. This Court should grant certiorari to reverse the Arkansas Supreme Court's decision which allowed impeachment of Mr. Fowler and his witnesses with irrelevant evidence of their unpopular political and religious views and is contrary to the decisions of this Court and those of two state courts of last resort which have held such impeachment to violate an accused's right to free speech, freedom of religion and freedom of association.

At Mr. Fowler's trial, there was no dispute over the fact that Mr. Fowler had a lengthy series of contacts with Ms. Wright in an (unsuccessful) attempt to proselytize her to his unorthodox political and religious views. There was, in addition, a heated factual dispute over whether Mr. Fowler followed Ms. Wright on October 9 as the last event in the continuing series of events giving rise to the harassment charge, with Mr. Fowler offering an alibi defense. With this state of the facts, all parties to the case recognized that the credibility of the witnesses was a pivotal issue, and the Supreme Court of Arkansas recognized that "[t]he credibility of Mr. Fowler and his alibi witnesses were crucial to the resolution of this case." Pet. App. 14a, 339 Ark. at 220, 5 S.W.3d at 17.

Against this background, the State introduced the theme of Mr. Fowler's political and religious beliefs during voir dire, Pet. App. 38a, emphasized this point as a factor relating to credibility

during its opening statement, Pet. App. 38a-40a, and then repeatedly elicited evidence of the unorthodox beliefs held by Mr. Fowler during its case in chief. Pet. App. 41a-44a. During Mr. Fowler's case in chief, the State extensively cross-examined Mr. Fowler and Mr. Herrington concerning their respective political and religious beliefs. Pet. App. 44a-51a. Although the trial court permitted this cross examination to take place over repeated objection, this same court recognized the irrelevance of this same evidence when offered by the defense in an effort to "blunt the sting," Pet. App. 42a, and this same court commented on the irrelevance of the evidence when overruling a defense objection to its admission. Pet. App. 11a, 48a.

Both the dissenting opinion in the Arkansas Court of Appeals and the decision of the Supreme Court of Arkansas address *Dawson v. Delaware*, 503 U.S. 159 (1992), distinguishing it only by fiat. In *Dawson*, this Court reiterated the longstanding principles that in addition to protecting the freedom of speech and religion, *per se*, the First Amendment protects an individual's right to join groups and associate with others holding similar beliefs, and this protection "goes farther" than merely preventing the State from criminalizing certain protected conduct in the first instance. *Dawson*, 503 U.S. at 163, 168. As this Court clearly enunciated in *Dawson*, the First Amendment protection "similarly prevents [the State] from employing evidence of a defendant's abstract beliefs at a sentencing hearing when those beliefs have no bearing on the issue being tried." *Dawson*, 503 U.S. at 168.[5] This case is in all relevant respects controlled by *Dawson*, which was effectively nullified by the decision of the Supreme Court of Arkansas.

In Mr. Fowler's case, as in *Dawson*, the State proved no affiliation whatsoever except one defined by shared beliefs. As in *Dawson*, "the issue presented is whether the purest form of constitutionally protected associational activity – mere affiliation with a group defined by its belief in a distasteful ideology" can be used to persuade a jury that, because of his political beliefs and

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[5] It is notable that *Dawson* found evidence of the defendant's abstract beliefs to be improper evidence in a sentencing proceeding, where the rules of evidence are substantially more relaxed than at a guilt phase trial.

association, an accused is the type of person who would be guilty of a crime and should be behind bars. *See* Petitioner's Brief in *Dawson v. Delaware*, 1991 WL 527601, at *16.

In Mr. Fowler's case, just as in *Dawson*, the beliefs of an accused were used against the accused to persuade the jury that, because of his political beliefs and association, the accused is deserving of increased punishment. A sentence based to any degree on beliefs protected by the First Amendment is constitutionally invalid. *United States v. Lemon*, 723 F.2d 922 (D.C. Cir. 1983). There can be little doubt that Mr. Fowler's conviction and sentence is constitutionally infirm. The Arkansas Court of Appeals recognized this fact. Pet. App. 26a, 67 Ark. App. at 118, 992 S.W.2d at 806. Even the dissenting opinion in the Arkansas Court of Appeals, which was broadly incorporated into the opinion of the Arkansas Supreme Court, recognizes that "there is some chance" that "the State's line of questioning was used to persuade the jury that, because of his political beliefs and association, [Mr. Fowler] was the type of person who would be guilty of harassment and should be behind bars." Pet. App. 37a-38a, 67 Ark. App. at 131, 992 S.W.2d at 813. There is no room under First Amendment law as interpreted by this Court for such a possibility.

In this case just as in *Dawson*, the evidence concerning the accused's political and religious beliefs were irrelevant.[6] This irrelevance was twice noted by the trial court which nevertheless admitted this irrelevant evidence of religious and political belief. Pet. App. 42a, 48a. Here, just as in *Dawson*, there is no proof that the political affiliation resulted in any illegal acts. This fact, which was simply ignored by the Arkansas Supreme Court, was noted by both the Arkansas Court of Appeals and the dissent in the Arkansas Supreme Court. *See* Pet. App. 20a, 339 Ark. at 226, 5 S.W.3d at 20, Pet. App. 25a-26a, 67 Ark. App. at 117, 992 S.W.2d at 806. The sole

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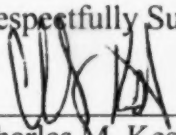
[6] In *Dawson*, as in this case, the state courts focused upon the rules of evidence rather than the constitutional dimensions of the case. *Compare Dawson v. State*, 581 A.2d 1102, 1103 (1990) and Petitioner's Brief in *Dawson v. Delaware*, 1991 WL 527601, at *12-13 *with* Pet. App. 37a-38a, at 67 Ark. App. at 130, 992 S.W.2d at 812, and Pet. App. 13a-14a, 339 Ark. at 221-22, 5 S.W.3d at 18.

basis upon which this evidence was argued to be relevant was on the issue of credibility, allegedly on the basis that neither Mr. Fowler nor his alibi witness acknowledged an oath in a "military" court. However, not only is the record is utterly devoid of any evidence to support this speculative assertion, but all evidence in the record is uniformly to the contrary, showing that these witnesses understood and accepted their obligation to testify truthfully under oath. *See* Pet. App. 20a, 339 Ark. at 226, 5 S.W.3d at 20, Pet. App. 25a-26a, 67 Ark. App. at 117, 992 S.W.2d at 806 For these reasons, Mr. Fowler's case, as was *Dawson*, is unlike *United States v. Abel*, 469 U.S. 45 (1984), which involved evidence that Abel's co-members in the Aryan Brotherhood were "sworn to lie on behalf of each other." State courts of last resort that have encountered identical attempts to impeach an accused with his or her abstract religious or political beliefs have found them to be improper. *State v. Nelson*, 155 N.J. 487, 715 A.2d 281, 290-93 (1998), *State's petition for cert. denied*, -- U.S. --, 119 S. Ct. 890 (1999) (reversing sentence in murder and assault case where defendant impeached with evidence concerning her belief that Second Amendment was "sacrosanct" and that "founding fathers" believed there "might be another bloody revolution" without any evidence that defendant actually advocated violence); *State v. Grayson*, 546 N.W.2d 731, 737-38 (Minn. 1996) (admission of evidence of defendant's knowledge of Malcolm X's political views improper and prejudicial, but error harmless). The decision of the Arkansas Supreme Court is simply irreconcilable with *Dawson* and the state cases following *Dawson*, and this Court should take this opportunity to resolve this conflict and clarify *Dawson* by granting certiorari to reverse the decision of the Arkansas Supreme Court.

CONCLUSION

For these reasons, the Petitioner respectfully requests this Court to grant his Petition for Writ of Certiorari and review the decision of the Supreme Court of Arkansas.

Respectfully Submitted,



Charles M. Kester,
Counsel of Record
THE LAW OFFICES OF
CHARLES M. KESTER, P.L.C.
P.O. Box 184
Fayetteville, AR 72702
(501) 582-4600

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

GERALD DEAN FOWLER,

Petitioner

v.

STATE OF ARKANSAS,

Respondent

PETITIONER'S APPENDIX

PETITIONER'S APPENDIX: TABLE OF CONTENTS

Fowler v. State of Arkansas, 339 Ark. 207, 5 S.W.3d 10 (1999) 2a
Fowler v. State of Arkansas, 67 Ark. App. 114,
992 S.W.2d 804 (1999).....22a
Excerpts From State's Voir Dire 38a
Excerpts From State's Opening Statement 38a
Excerpts From Defense Opening Statement 40a
Excerpts From Direct Examination Of State's Witness
Stephen Cobb.....41a
Excerpts From Cross-Examination Of State's Witness
Stephen Cobb.....42a
Excerpts Of Direct Examination Of State's Witness
Helen Wright 43a
Excerpts Of Cross-Examination Of State's Witness
Helen Wright 44a
Excerpts Of Cross-Examination Of Defendant
Gene Fowler 44a
Excerpts Of Redirect Examination Of Defendant
Gene Fowler 48a
Excerpts Of Cross-Examination Of Defense Witness
Nick Herrington 48a
Redirect Examination Of Defense Witness
Nick Herrington 51a
Jury Instruction No. 9 .....51a
Excerpts From State's Closing Argument 51a
Excerpts From Defense Closing Argument.....52a

Gerald Dean FOWLER

v.

STATE of Arkansas

CR 99-802 ___ S.W.3d ___

Supreme Court of Arkansas

Opinion delivered November 18, 1999

1. Appeal & error -- petition for review -- case considered as though originally filed in supreme court. -- Upon a petition for review, the supreme court considers the case as though it were originally filed in that court.

2. Evidence -- admission of -- discretionary with trial court. -- The admission of evidence is a matter that lies within the discretion of the trial court.

3. Evidence -- Ark. R. Evid. 608(b) -- applicability of. -- Rule 608(b) of the Arkansas Rules of Evidence pertains to the impeachment of a witness's credibility by proving specific instances of conduct; where there was no attempt by the State to impeach either witness's credibility by proving specific instances of conduct, the Rule was inapplicable; impeachment by conduct under Rule 608(b) is a separate matter from impeachment by proof of bias.

4. Evidence -- admissibility of -- relevance & credibility. -- As a general rule, all relevant evidence is admissible; relevant evidence is any evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence; a witness's credibility is always an issue, subject to attack by any party; the scope of cross-examination extends to matters of credibility; a matter is not collateral if the evidence is relevant to show bias, knowledge, intent, or interest; proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence that might bear on the accuracy and truth of a witness' testimony; matters affecting the credibility of a witness are always relevant.

5. Evidence -- witnesses's commitment to truth in doubt -- evidence relevant to issue of credibility. -- Where the State successfully elicited testimony from both the appellant and his alibi witness from which the jury could have concluded that the witnesses questioned the authority of the court to hear the case, and that their commitment to tell the truth in a court whose authority they questioned might be doubtful, the evidence elicited was circumstantial evidence bearing on the witnesses's credibility; the evidence of the witnesses's beliefs concerning the circuit court's authority over them would have a tendency to make the facts to which they testified less probable in the eyes of the jury than they would be without the evidence; hence, that evidence was relevant to the issue of their credibility.

6. Evidence -- trial court given wide discretion -- when reversed. -- The trial court is given wide discretion in evidentiary rulings, and the supreme court will not reverse unless the trial court has abused its discretion.

7. Trial -- cross-examination -- examiner given wide latitude. -- The cross-examiner should be given wide latitude because cross-examination is the means by which to test the truth of the witness's testimony and the witness's credibility; cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested; the cross-examiner is not only permitted to delve into the witness's story to test the witness's perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness; it is important to allow wide latitude with regard to the admission of evidence relevant to the bias of a witness.

8. Evidence -- cross examination allowed -- no abuse of discretion found. -- The trial court's ruling that allowed the challenged testimony, which went to show bias in the witnesses, was not an abuse of discretion.

9. Evidence -- no ruling obtained at trial -- issue not preserved for appeal. -- Merely mentioning the word "prejudicial" without obtaining a ruling by the trial court results in a failure to preserve an Ark. R. Evid. 403 issue for appeal; where no ruling was

obtained at trial, the supreme court was precluded from considering Rule 403.

Appeal from Washington Circuit Court; William Storey, Judge; affirmed;

Arkansas Court of Appeals reversed.

Benton D. Bryant, for appellant.

Winston Bryant, Att'y Gen., by: Gil Dudley, Asst. Att'y Gen., for appellee.

Annabelle Clinton Imber, Justice.

This case is before us on review from the Arkansas Court of Appeals.

Mr. Gerald Fowler appealed his conviction of harassment in Washington County Circuit Court. He argued that the trial court erred in permitting the State to cross-examine him and another witness about their attendance at a meeting and about certain beliefs they shared concerning the authority of the Washington County Circuit Court over them. The Court of Appeals agreed with Mr. Fowler and reversed. We granted the State's petition for review. It is well settled that upon a petition for review, we consider the case as though it were originally filed in this court. Frette v. City of Springdale, 331 Ark. 103, 959 S.W.2d 734 (1998); Travis v. State, 331 Ark. 7, 959 S.W.2d 32 (1998).

The victim, Helen Wright, worked as a receptionist at the Jones Center in Washington County, Arkansas. She became acquainted with Mr. Fowler as a result of his regular visits to the Jones Center to attend meetings of a community-improvement group. Mrs. Wright testified that Mr. Fowler became very demanding of her during his visits to the center. Specifically, she testified that Mr. Fowler began talking to her on a daily basis about religion and that his unprovoked discussions with her interfered with the performance of her job. In September of 1997, she reported Mr. Fowler to security at the center, at which time two security officers spoke to him about his behavior.

On September 13, 1997, Mr. Fowler telephoned Mrs. Wright at her home and asked her to write down his name and phone

number. She reported that incident to security officers at the Jones Center. The following week, Mr. Fowler telephoned Mrs. Wright at the Jones Center. After she informed a security officer about the call, he picked up the phone and told Mr. Fowler to leave Mrs. Wright alone. Five minutes later, Mr. Fowler arrived at the Jones Center and approached Mrs. Wright. At that point, she called the police. When they arrived, they spoke with Mr. Fowler and directed him not to harass Mrs. Wright. As a result of this incident, the Municipal Judge for the City of Springdale issued an order on October 7, 1997, that prohibited Mr. Fowler from approaching or communicating with Mrs. Wright or her family.

The charge of harassment that forms the basis of this appeal arises out of an incident that is alleged to have occurred on October 9, 1997. According to the testimony of Mrs. Wright and her daughter, they left the Jones Center at about 10:00 p.m. that day. During their drive home, they stopped at a red light at the intersection of Mountain Road and Highway 265. Mr. Fowler pulled up beside them in a minivan and made eye contact with Mrs. Wright and her daughter. After the red light turned green, Mr. Fowler proceeded to follow Mrs. Wright and her daughter for several miles. Mrs. Wright testified that the minivan driven by Mr. Fowler followed her after she turned left onto Randall Wobbe Road. She then turned right onto Lowell Road and turned around at the first business. After she pulled back onto Lowell Road and headed south, she again saw Mr. Fowler as he traveled north on Lowell Road. She then turned back onto Randall Wobbe Road and traveled west toward Highway 71. After making a right turn onto Highway 71, she drove north for a distance of about two miles. At the intersection of Highway 71 and Apple Blossom Road, Mrs. Wright turned right onto Apple Blossom Road, and again turned around at the first business. She then drove back to the intersection of Apple Blossom Road and Highway 71. As she was preparing to turn and go back south on Highway 71, she again saw Mr. Fowler driving the minivan north on Highway 71.

This testimony by Ms. Wright and her daughter was controverted by several witnesses for the defense. Mr. Fowler testified that he attended a meeting at the Jones Center on October 9,

1997, left the center at approximately 9:45 p.m., and then arrived at a local pizza restaurant at about 10:10 p.m. or 10:15 p.m. His testimony was corroborated by three witnesses who attended the meeting that evening and also met him at the pizza restaurant. According to Mr. Fowler and his roommate, Mr. Fowler was at their home between the time he left the Jones Center and the time he arrived at the restaurant, that is, between 9:45 p.m. and 10:10 p.m. or 10:15 p.m. On cross-examination by the State, Mr. Fowler and one of his alibi witnesses, Mr. Nick Herrington, were asked about the meetings they attended at the Jones Center and the beliefs they shared concerning the court's authority over them. The trial court ruled that these inquiries by the State were relevant to the issue of each witness's credibility. At the conclusion of the trial, the jury found Mr. Fowler guilty of the crime of harassment and imposed a sentence of one year in the Washington County Jail and a fine of $1000.

Mr. Fowler asserts on appeal that the trial court erred when it allowed the State to question him and Mr. Herrington about their political beliefs. A defendant's political beliefs are ordinarily irrelevant in a criminal prosecution. However, the particular question presented in this appeal is whether the beliefs that this defendant and his alibi witness shared about the Washington County Circuit Court's authority over them were relevant to the issue of their credibility. The admission of evidence is a matter that lies within the discretion of the trial court. Arthur v. Zearley, 337 Ark. 125, 992 S.W.2d 67 (1999); Bell v. State, 334 Ark. 285, 973 S.W.2d 806 (1998). In order to determine whether the trial court abused its discretion in permitting the challenged inquiry by the State, we first examine the relevant portions of Mr. Fowler's and Mr. Herrington's cross-examination by the State. After Mr. Fowler's testimony on direct examination, the State cross-examined:

Q Let me ask you, do your meetings, do you have discussions or talk about or deal with government matters at your meetings?

A No.

Mr. Bryant: Objection, irrelevant, beyond the scope of direct examination.

Mr. Franco: I think if I'm allowed to flush [sic] this out I'll try to be as absolutely brief as possible but I think that I can get to a point that will deal directly with his credibility.

The Court: Well, I think if this goes to credibility then I'll permit it for at least the time being. Overruled.

Continuing Cross-Examination by Mr. Franco:

Q Do you deal with matters relating to the government?

A No, sir, we deal with matters relating to constitutional documents.

Q Okay, do these, do you have discussions regarding the authority that governments or more specifically courts have over you?

A No, sir, we discuss citizen's rights.

Q All right. In the realm of dealing with the court system, more specifically the criminal justice system?

A Well, it's mainly the exercise of your rights, citizen's rights.

Q What are those citizen's rights?

A Well, that would be too much to enumerate.

Q Please answer the question?

Mr. Bryant: Your Honor, it's beyond me how this can have anything to do with the credibility of a witness.

The Court: Well, again, Counsel, I have addressed the objection. I'm going to permit it up to a point so overruled. Now, you may proceed.

Continuing Cross-Examination by Mr. Franco:

Q What are those citizen's rights which you deal with -- I'll narrow it for you, dealing just with the criminal justice system and the court system?

A Well, we don't confine it to that.

Q I want -- let's just confine the topic to that for purposes of your answering the question?

A Well, it's -- you know and I don't know if I can quote it exactly, one of your founding fathers said, vigilance, and I can't quote it exactly but vigilance is the exercise of freedom to keep a nation's citizens free so it's to make people aware of what the

constitution is for and how that it is to work as a restraint against governmental abuses.

Q What governmental abuses?

A Well, I don't know, I feel strange you'd ask me that question as if you don't think there's ever been any governmental abuses.

Q Do you feel that you've ever been abused by the government yourself?

A I feel like that there has been an excess of it by the government, that and of course they're discussing this every day in the newspapers and this is what the courts are for is to try to work out the differences of people's opinions as to what is correctly judicial and what is not.

Q That flag right there has gold stripes on it; is that correct?

Mr. Bryant: Objection, Your Honor, may I approach please?

The Court: You may. Mr. Bryant: Your Honor, the only thing the Prosecutor is trying to do in this case is prejudice the Jury against my client because of his political beliefs. There's no way this has anything to do with the ability to tell the truth or not. This is an outrageous attempt on the Prosecutor's part to prejudice my client and I'd ask that he not be permitted to do that.

Mr. Franco: Throughout the entire prosecution of this matter Mr. Fowler has objected to the flag with gold stripes on it and stated it's military and doesn't have the authority over him, it's my understanding from his statement. I think if that's the belief here today I think it goes to, directly to the fact of if he thinks they have authority.

The Court: Well, you can narrow your question down to that particular issue which goes to credibility. I'm going to permit it but we need to narrow the scope of the inquiry and get on with it. All right. You may proceed.

By Mr. Franco:

Q What's the significance of the gold stripes on that flag right there?

A It shows that it's a military flag.

Q In your opinion, and?

A According to the studies that we have had, that's correct.

Q All right. What's that mean in your opinion if it's a military flag?

A Well, if -- now under, I'm quoting from the studies, all right.

Q Yes, sir, yes, sir? A U.S.C. § 1, I believe 4D, denotes the U.S. constitutional flag of America.

Q What type of flag is that supposed to be, what's the gold mean?

A It does not have a symbol on top.

Q The gold fringe means it's a military flag; is that correct?

A Yes, sir, according to army regulations, according to certain codes.

Q Is it your belief that if it's a military flag then there -- isn't it true that you're -- it's your belief that since we have military flag in the courtroom this is basically a military court and we don't have jurisdiction over you in this court, is that your belief?

A I understand that Reed versus Calvert says no U.S. citizen shall be tried in a military court.

Q Yes, sir?

A And President George Bush, and I don't remember the date right now, signed an executive order that all courts in the United States are military courts.

Q He did?

A He did.

Q Do you consider this to be a military court?

A I'm just telling you what the record is.

Q I'm asking do you consider this to be a military court?

A I don't know as I have an opinion. I'm telling you that's what I have read by executive order of a U.S. Supreme Court ruling.

Q One more question on this topic. Based upon your studies and the fact that's a military flag, you're not in the military; correct?

A Not now.

Q Do you feel that you are in the wrong court here today to be tried for the charges that have been brought against you?

A I'm here.

Q Do you feel by -- based upon your belief and your study that –

A Let me ask -- may I ask you a question?

The Court: Now wait a minute, wait a minute. This process is not going to work at all unless we follow some basic rules. Mr. Franco, you ask the questions and you respond to the questions if possible with either a yes or no and if you don't understand the question simply tell him and he will restate the question and maybe sometime before sunset this matter will come an end. Please try again to repeat the question and you just answer, you ask the question and you respond as briefly and succinctly as you possibly can hopefully with a yes or no and then we'll move ahead.

By Mr. Franco:

Q Based upon your study and your understanding of this executive order, do you feel that you are in the proper court yourself for the charges that have been filed against you?

A To the best of my study until I'm shown differently or can be proved differently I'm a U.S. citizen in one of the fifty states, I'm under the U.S. Constitution of America as a free citizen, I'm not in the military and if it's correct according to the study that's a military flag, that flag denotes what court I'm under in this room.

Q So you, based upon your study you believe this to be a military court?

A According to George Bush.

Then, on redirect by Mr. Bryant:

Q Gerald, are you nervous about being here today?

A I'm totally relaxed.

Q Even though you may have a disagreement about whether or not that particular flag is the proper flag to be displayed in a courtroom, do you fully accept -- I mean what's your thoughts about this Court's jurisdiction over you, do you accept that?

A Yeah, I have accepted it.

Q And what are your thoughts about the role of the Jury here today?

A I think that's a great American way.

Later in the trial, Mr. Nick Herrington was cross-examined by the State:

Q Your meetings out there, what type meeting is that?

Mr. Bryant: Object, Your Honor, beyond the scope of direct examination.

Mr. Franco: He said he was at the meeting. I think he opened the door.

The Court: Well, I really fail to see how it's relevant to these proceedings, Counsel. If you can tie it into something, I'll permit a few questions.

Mr. Franco: It's just like when we did Mr. Fowler, I'll get right to the point.

By Mr. Franco:

Q You notice the flag over there?

A Yes, sir.

Q What sticks out on that flag to you?

A A variety of things.

Q What about the gold fringe around the flag?

A Indicates military law.

Q What does that mean to you?

A It's not common law.

Q Okay, it's not common law?

A No, sir it's not.

Q The law that we're doing in court here today, the trial we have is a criminal trial?

A Yes, sir.

Q What type of law is this we're doing here today?

A That flag indicates military law.

Q In your opinion is this a military court?

A Not my opinion.

Q Whose opinion?

A Title 4, U.S. Code, Section 102, which defines the flag, Title 36, U.S. Code 71-73, which goes further into the flag, Army Regulation 840-10, that really gets into it, Chapter 8.

Q Do you believe that Mr. Fowler is in the right court today for the charges for, he's been charged with, a violation of state law—

Mr. Bryant: Your Honor, this is all very interesting.

The Court: Overruled, it goes to credibility. I'm going to permit it. Overruled.

By Mr. Franco:

Q You believe Mr. Fowler is in the correct court today based upon the flag that's here and he's charged with a crime under the laws of the State of Arkansas?

A How you define a crime—

Q The crime of harassment, he's charged with the crime of harassment?

A Well—

Q It's a yes or no question, do you believe he's in the right court?

A I don't know.

Q Do you -- you're here as a witness in this court today and I think you took an oath, you were sworn in; is that correct?

A Yes, sir.

Q Does the fact that you're under that flag, you don't -- let me back up just a second, you believe that that's the wrong flag to be in this courtroom, correct?

A We don't have a complete set of flags here, let's put it that way.

Q What other flag is missing then if that flag is flying?

A The American flag of peace means Old Glory is present, do you see it?

Q So we have the right flag?

A You don't have a complete set.

Q Based upon that do you believe that you're bound by the authority of this court here today?

A I'm a witness here.

Q Well, do you believe based upon your belief that Mr. Fowler is bound by the authority of this court?

A Yes, he's got an attorney.

Q No, let me restate my question. Do you believe that Mr. Fowler is bound by the authority of this court, that he comes under the authority of this court based upon what you have talked about, the flag and stuff—

Mr. Bryant: Your Honor, how is the witness supposed to testify as to what Mr. Fowler believes? I believe that's improper.

The Court: That wasn't the question. The question was does this witness believe that Mr. Fowler is bound by the authority of this

court, which I assume goes to his belief in this system which to some extent has something to do with his credibility. I think if he can narrow the issue to one of credibility I'm going to permit the inquiry and please, let's move along.

Mr. Franco: That's the last question I have, Your Honor, and that's exactly what I'm asking about.

By Mr. Franco:

A If he didn't believe he was bound he wouldn't be here.

Then, on redirect by Mr. Bryant:

Q Mr. Herrington, understand what it means to take an oath to tell the truth?

A Yes, sir.

Q Are you bound by that oath here today?

A Yes, sir.

On appeal, Mr. Fowler argues that Rule 608(b) of the Arkansas Rules of Evidence governs the admissibility of the challenged testimony. This argument misses the mark. Rule 608(b) pertains to the impeachment of a witness's credibility by proving specific instances of conduct. Here, there was no attempt by the State to impeach either witness's credibility by proving specific instances of conduct. Rather, the State sought to establish that Mr. Fowler and Mr. Herrington did not believe the Washington County Circuit Court had authority to try the case and thus cast doubt on their obligation to tell the truth under oath. Rule 608(b) is simply not applicable. The United States Supreme Court rejected a similar argument in United States v. Abel, 469 U.S. 45 (1984), and recognized that impeachment by conduct under Rule 608(b) is a separate matter from impeachment by proof of bias. As a general rule, all relevant evidence is admissible. Ark. R. Evid. 402. Relevant evidence is any evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Ark. R. Evid. 401. A witness's credibility is always an issue, subject to attack by any party. Dansby v. State, 338 Ark. 697, ___ S.W.3d ___ (1999); Ark. R. Evid. 607. The scope of cross-examination extends to matters of credibility. Ark. R. Evid. 611. A matter is not collateral if the evidence is relevant to show bias, knowledge, intent, or

interest. See Dansby v. State, supra; Arthur v. Zearley, supra; Pyle v. State, 314 Ark.165, 862 S.W.2d 833 (1993); Goodwin v. State, 263 Ark. 856, 568 S.W.2d 3 (1978). Proof of bias is "almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony." United States v. Abel, supra, at 52. In other words, matters affecting the credibility of a witness are always relevant.

In this case, Mr. Fowler testified at trial and denied harassing the victim. He also presented alibi witnesses in his defense. On the other hand, the victim and her daughter testified that they were harassed by Mr. Fowler. The credibility of Mr. Fowler and his alibi witnesses were crucial to the resolution of this case. The issue presented, then, is whether the State's line of questioning was relevant to the issue of their credibility. We conclude that, in this particular instance, it was.

The State successfully elicited from Mr. Fowler his view that the flag in the courtroom was a military flag; that Reed v. Calvert says that no United States citizen shall be tried in a military court; and that President Bush signed an executive order that all courts in the United States are military courts. From Mr. Herrington, the State elicited his view that the flag in the trial court was not "common law" but indicated military law; that the United States Code stated that the trial court was a military court; and that Mr. Herrington was uncertain that Mr. Fowler was in the right court. The jury could have concluded from this evidence that the witnesses questioned the authority of the court to hear the case, and that their commitment to tell the truth in a court whose authority they questioned might be doubtful. Thus, the evidence elicited was circumstantial evidence bearing on the witnesses's credibility. The man who believes that he is under no legal or moral obligation at all times and under all circumstances to tell the truth under the sanction of an oath has destroyed the only test by which he can claim credit at the hands of men. Wigmore, Evidence § 957 (Chadbourn Rev. 1970) (quoting from Anonymous, 19 S.C.L. (1 Hill) 251, 252 (1833)). The evidence of Mr. Fowler's and Mr. Herrington's beliefs concerning the Washington County Circuit Court's authority over them would have

a tendency to make the facts to which they testified less probable in the eyes of the jury than they would be without the evidence. Hence, that evidence was relevant to the issue of their credibility.

The testimony at issue in this case was admitted during the State's cross-examination of Mr. Fowler and Mr. Herrington. This court has traditionally taken the view that the cross-examiner should be given wide latitude because cross-examination is the means by which to test the truth of the witness's testimony and the witness's credibility. Wilson v. State, 289 Ark. 141, 712 S.W.2d654 (1986). Similarly in Davis v. Alaska, 415 U.S. 308 (1974), the United States Supreme Court reiterated that:

> Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.... The cross-examiner is not only permitted to delve into the [witness's] story to test the [witness's] perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness.

Davis v. Alaska, supra. We have stressed the importance of allowing wide latitude with regard to the admission of evidence relevant to the bias of a witness. Jones v. State, 336 Ark. 191, 984 S.W.2d 432 (1999). Also, the trial court is given wide discretion in evidentiary rulings, and we will not reverse unless the trial court has abused its discretion. Jones v. State, supra. Under these circumstances, we cannot say that the trial court's evidentiary ruling was an abuse of discretion.

The dissenting opinion relies on Ark. R. Evid. 403, which makes otherwise relevant evidence inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice. However, the Rule 403 weighing issue was not preserved for appeal because it was neither raised at trial by Mr. Fowler nor was it ruled upon by the trial court. While Mr. Fowler mentioned the word "prejudice," he never put the trial judge on notice that he was asking him to balance probative value against prejudice. Also, the trial court never specifically ruled on the prejudice objection. We have previously held that merely mentioning the word "prejudicial" without obtaining a ruling by the trial court results in a failure to

preserve the Rule 403 issue for appeal. Terry v. State, 309 Ark. 64, 826 S.W.2d 817 (1992). Therefore, we are precluded from considering Rule 403. Id.; Thomson v. Littlefield, 319 Ark. 648, 893 S.W.2d 788 (1995). The dissenting opinion also argues that Dawson v. Delaware, 503 U.S. 159 (1992), is controlling because there "the Court, in essence, determined that the admission of the stipulation was more prejudicial than probative...." We note, however, that Mr. Dawson did not argue for a weighing of probative value versus prejudice. Additionally, the Supreme Court did not base its decision on the prejudicial effect of the evidence. Rather, the Court determined that the evidence had "no relevance to the sentencing proceedings in this case." Id. at 166. In contrast, the evidence in this particular case concerning Mr. Fowler's and Mr. Herrington's beliefs about the Circuit Court's authority over them was relevant to the issue of their credibility.

Affirmed.

Glaze, Thornton, and Smith, JJ., dissent.

Lavenski R. Smith, Justice, dissenting.

The majority holds that Fowler's political opinions are relevant evidence in his prosecution for harassment. The majority does so by stating that a witness's credibility is always an issue and by pointing out that proof of bias goes to credibility and is therefore admissible. The majority thus affirms the trial court's decision to permit the prosecution to enquire into the defendant's political beliefs in order to discredit his testimony that he did not follow the victim in his vehicle on October 9, 1997. In particular, the majority takes the position that Fowler's beliefs regarding United States flags and military courts called into question his respect for the authority of the court. Thus, if he might question the court's authority he might also not honor his oath as a witness to speak truthfully. The majority further holds that Fowler's objection to the questioning failed to raise an issue of prejudice under Ark. R. Evid. 403. I disagree.

Evidence of bias is clearly admissible and for good reason. However, there are limits. Bias evidence, just like any other relevant evidence, is subject to limitations under Ark. R. Evid. 403, should an

objection be made. The majority holds that Fowler failed to make this objection. I believe Fowler preserved objections to the evidence both as to its ultimate relevance and as to its potential prejudice under Rule 403.

As the majority quoted above, during Fowler's cross-examination, Fowler's attorney in his third of six objections to the line of questioning, stated:

Mr. Bryant: Objection, Your Honor, may I approach please?

The Court: You may.

Mr. Bryant: Your Honor, the only thing the Prosecutor is trying to do in this case is prejudice the Jury against my client because of his political beliefs. There's no way this has anything to do with the ability to tell the truth or not. This is an outrageous attempt on the Prosecutor's part to prejudice my client and I'd ask that he not be permitted to do that.

The Court: Well, you can narrow your question down to that particular issue which goes to credibility. I'm going to permit it but we need to narrow the scope of the inquiry and get on with it. All right. You may proceed. The court then allowed the prosecutor to proceed with the questioning on the basis of credibility, in effect denying the objection.

While Fowler's objection does not specifically cite Rule 403 as the basis for the objection, his objection clearly addresses "prejudice" as a ground for exclusion of the evidence. Specificity in making objections is important, but not always essential.

> Because the purpose of a trial objection is to avoid error, an objection to a question should be specific enough to inform the trial court of the particular problem, so that the court can realize what rule of evidence is being invoked, and why that rule would exclude a responsive answer, and can then rule intelligently thereon, and so that the party offering the testimony is given an opportunity to confront the objection. ... But all that is required of any objection to evidence is that the objection be sufficiently clear and definite so that the court will understand the reason for the objection and so that the basis of the

> objection is apparent to the trial court. Thus, even if inartfully stated, the courts will allow an objection that apprises the trial court of the reason for the objection.

75 Am. Jur.2d Trial § 424 (1998). Accordingly, Fowler's objection on the grounds of "prejudice" sufficed to alert the trial court that although possibly relevant, the evidence the prosecutor was attempting to elicit regarding Fowler's political beliefs was substantially more prejudicial than probative. In addition, a specific ground for an objection need not be stated where the error is clear from the context. See Ark. R. Evid. 103; Thomson v. Littlefield, 319 Ark. 648, 893 S.W.2d 788 (1995). Because a sufficient objection was raised, we should review the prejudicial impact of the prosecutor's line of questioning in this case.

As the majority noted, the United States Supreme Court considered the admissibility of similar evidence for bias purposes in Abel, supra, and under a Rule 403 analysis in Dawson v. Delaware, 503 U.S. 159 (1992). While the Court found that evidence of the tenets of the "Aryan Brotherhood" in Abel was properly developed, in Dawson, the Court found that it was reversible error to allow such information into evidence. The distinctions between Abel and Dawson are crucial. The instant case is much more similar to Dawson than to Abel. In Abel, the defendant and two cohorts were indicted for bank robbery. At Abel's trial, the prosecution called a witness who had also been a member of this gang. One of Abel's witnesses, Mills, had testified that he had no knowledge of the gang or its tenets, and the prosecution then offered for rebuttal another gang member who testified that he, Abel, and Mills were all members of this gang. This witness testified that the gang had sworn to perjure themselves to protect one another. The Ninth Circuit Court of Appeals found that the testimony could not be offered to show that Mills was lying because he was a member of the gang. The United States Supreme Court reversed, holding that Abel's and Mills' membership in the gang was sufficiently probative of Mills' possible bias towards Abel to warrant its admission into evidence.

In the opinion, the Court discussed how bias applies to a witness' testimony for or against a defendant. Because of the

"common law of evidence" concept under which this testimony came in, the Court applied Rule 403 regarding the probative value of the evidence versus its prejudicial effect to determine in part whether the evidence was admissible to the issue at hand. The Court determined that its probative value outweighed its prejudice because of the common bond and shared beliefs Mills and Abel had through the gang in which they were involved, and specifically because these beliefs included a willingness to perjure themselves. Abel is also important because of the discussion the Court gave to the common membership that Abel and the two other witnesses shared. The Court specifically noted that "a witness's and a party's common membership in an organization, even without proof that the witness or party has personally adopted its tenets, is certainly probative of bias." Abel, 469 U.S. at 52.

> However, the Court qualified this broad statement by stating: [T]he type of organization in which a witness and a party share membership may be relevant to show bias. If the organization is a loosely knit group having nothing to do with the subject matter of the litigation, the inference of bias arising from common membership may be small or nonexistent. If the prosecutor had elicited that both respondent and Mills belonged to the Book of the Month Club, the jury probably would not have inferred bias even if the District Court had admitted the testimony. The attributes of the Aryan Brotherhood -- a secret prison sect sworn to perjury and self-protection -- bore directly not only on the fact of bias but also on the source and strength of Mills' bias. The tenets of this group showed that Mills had a powerful motive to slant his testimony towards respondent, or even commit perjury outright.

Abel, 469 U.S. at 54.

By contrast, in Dawson, the Court reversed a first-degree murder sentence in the sentencing stage of trial based on the admission of a stipulation that Dawson was involved with the Aryan Brotherhood. The stipulation apparently proved only the group's

abstract beliefs without proving that the group had committed any unlawful conduct or violent acts. As such, the Court found that it was not relevant to help prove any aggravating circumstances, or to rebut any mitigating evidence because membership in the group, in and of itself, cannot be considered sinister. In Dawson, the Court, in essence, determined that the admission of the stipulation was more prejudicial than probative because the stipulation was not sufficient to prove any aggravating circumstances. There was no foundation for finding that membership in the Aryan Brotherhood in and of itself proved anything relevant. The Court stated:

> Delaware might have avoided this problem if it had presented evidence showing more than mere abstract beliefs on Dawson's part, but, on the present record, one is left with the feeling that the Aryan Brotherhood evidence was employed simply because the jury would find these beliefs morally reprehensible. Because Delaware failed to do more, we cannot find the evidence was properly admitted as relevant character evidence.

Dawson, 503 U.S. at 167. However, in Abel, the prosecution laid the foundation by offering its own witness who was a member of the group who testified regarding the tenets of the group, including that they would lie for one another. The Court allowed that testimony in order to show that Mills, Abel's witness, was possibly biased in Abel's favor.

In the instant case, there is no evidence that the group to which Fowler belonged espouses perjury in defense of other members before the courts. Nor is there any clear connection made between the witness's abstract belief regarding indicia of court authority and a propensity for dishonesty. In fact, the record reflects very little about the group in question called "Community Improvement". The prosecutor began with a general inquiry concerning the subject matter of the group's meetings. He progressed to inquire into Fowler's beliefs about constitutional documents, citizen's rights, governmental abuses, the U.S. flag and concluded with a query about whether Fowler believed he was in a military court. On redirect, Fowler acknowledged his submission to the

court's jurisdiction and reaffirmed his obligation to speak truthfully. Certainly, Fowler and any alibi witness who testified that he was elsewhere during the commission of the offense was fair game for cross-examination. But, what little, if anything, the prosecution's questions may have proved of bias was outweighed by the prejudice of stigmatizing Fowler as one with uncommon political beliefs. Those who have views, whether political, religious, moral, or philosophical, not generally embraced by the majority should not find those views so easily used to their detriment in our courts. Mr. Fowler may well have committed the offense for which he was charged and if so should endure the appropriate consequences. However, evidence of his abstract beliefs, without more than shown in the instant case, should not have been admitted into evidence. I, therefore, respectfully dissent.

Thornton, J., joins. Glaze, J., dissents separately.

Reporter's note: See Fowler v. State, 67 Ark. App. 114, 992 S.W.2d 804 (1999).

Gerald Dean FOWLER

v.

STATE of Arkansas

CA CR 98-1020 ___ S.W.2d ___

Court of Appeals of Arkansas
Divisions I and II

Opinion delivered June 16, 1999

1. Evidence -- Ark. R. Evid. 608 -- test of admissibility. -- The test of admissibility may be summarized in three steps: (1) the question must be asked in good faith; (2) its probative value must outweigh any prejudicial effect; (3) the prior conduct must relate to the witness' truthfulness; Ark. R. Evid. 608 limits cross-examination to specific instances of conduct that are clearly probative of truthfulness or untruthfulness, as distinguished from conduct probative of dishonesty.

2. Evidence -- determination of undue prejudice -- balancing left to sound discretion of trial judge. -- Whether evidence is unduly prejudicial is determined under Rule 403 of the Arkansas Rules of Evidence, which provides that, although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence; this balancing is a matter left to the sound discretion of the trial judge, and his decision will not be reversed absent a manifest abuse of that discretion.

3. Evidence -- State's line of questioning improper under Ark. R. Evid. 608 -- reversed. -- Where appellant's belief regarding military courts and their jurisdiction was not clearly probative of his truthfulness, and the State did not attempt to show that appellant's organization required him to lie if he was in the "wrong" court or a court without jurisdiction, the State's line of questioning was improper under Ark. R. Evid. 608, as it was not clearly probative of the appellant's truthfulness; the law of evidence does not presume

that participation in a group that holds unconventional views manifests a propensity for truthfulness or untruthfulness; examination into such matters is proper only where such associations are probative of a witness's truthfulness or untruthfulness under Rule 608; reversed.

Appeal from Washington Circuit Court; William A. Storey, Judge; reversed.

Brenton D. Bryant, for appellant.

Winston Bryant, Att'y Gen., by: Gil Dudley, Asst. Att'y Gen., for appellee.

Wendell L. Griffen, Judge.

Gerald D. Fowler appeals his conviction of harassment in Washington County Circuit Court on May 14, 1998. Appellant argues that the trial court erred when it permitted the State to inquire during cross-examination into his and a witness's political beliefs and attendance at a meeting. We agree and reverse.

On October 9, 1997, the victim and her twelve-year-old daughter were driving home about 10:00 p.m. when they realized that they were being followed by the appellant. She was leaving work from an establishment called the Jones Center. The victim testified that appellant drove alongside her while she was stopped at a red light and subsequently began following her.

At the jury trial for harassment, the court allowed the prosecution to question appellant and one of his witnesses about 1) their attendance at meetings at the Jones Center and 2) appellant's political beliefs. Arguing appellant's credibility was at issue, the State's questions included:

1. What are those citizen's rights which you deal with ... dealing just with the criminal justice system and the court system?

2. Do you feel that you've ever been abused by the government yourself?

3. Do you consider this to be a military court [and therefore does not have jurisdiction over you]?

Counsel for appellant objected to much of the line of questioning, arguing that it was not relevant to credibility or the

issues in the case and that the State was attempting to prejudice the jury against the appellant. The trial court permitted the questioning. Appellant was convicted, sentenced to one year in the Washington County Jail, and fined $1000. Appellant argues that the line of questioning was not permitted by Rule 608 of the Arkansas Rules of Evidence and was not relevant to the case. He contends that his political views were not probative of truthfulness or veracity. Furthermore, appellant argues that this line of questioning prejudiced his right to a fair trial by implying that he was inherently unreliable due to his beliefs and political association. The State argues that appellant's beliefs affected his credibility and whether or not he will testify truthfully in court. The State contends that appellant's beliefs go directly to whether or not he believes the court has authority over him.

> Rule 608 of the Arkansas Rules of Evidence provides: Evidence of character and conduct of witness. (a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise. (b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Pet. App. 24a

(Emphasis added.) The test of admissibility may be summarized in three steps: 1) the question must be asked in good faith; 2) its probative value must outweigh any prejudicial effect; 3) the prior conduct must relate to the witness' truthfulness. Mackey v. State, 279 Ark. 307, 651 S.W.2d 82 (1983). The rule limits cross-examination to specific instances of conduct that are clearly probative of truthfulness or untruthfulness, as distinguished from conduct probative of dishonesty. Rhodes v. State, 276 Ark. 203, 634 S.W.2d 107 (1982); Green v. State, 59 Ark. App. 1, 953 S.W.2d 60 (1997).

In United States v. Abel, 469 U.S. 45 (1984), testimony regarding membership in a secret prison gang was held to be probative of bias and not unduly prejudicial. One of the organization's tenets required each member to perjure himself on other members' behalf. The court held that, not only did the membership in the gang "show potential bias in favor of the respondent; because of the tenets of the organization described, it might also impeach his veracity directly." Id. at 56. The Court held "no view as to whether the evidence of ... membership ... would be a specific instance of ... conduct which could not be proven against him by extrinsic evidence except as otherwise provided in Rule 608(b)." Id.

Whether evidence is unduly prejudicial is determined under Rule 403 of the Arkansas Rules of Evidence, which provides:

> Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

This balancing is a matter left to the sound discretion of the trial judge, and his decision will not be reversed absent a manifest abuse of that discretion. Bohanan v. State, 324 Ark. 158, 919 S.W.2d 198 (1996); Weger v. State, 315 Ark. 555, 869 S.W.2d 688 (1994).

In this case, it is not alleged that appellant's political activities and those of his witness condoned lying in furtherance of

the organization's purpose. Nothing in the record suggested that members of the appellant's group would perjure themselves. What was sought at trial was the use of appellant's political associations to attack his credibility and cast doubt as to whether he would testify truthfully in a court with a "military" flag.

The conduct must be clearly probative of truthfulness. Appellant's belief regarding military courts and their jurisdiction is not clearly probative of his truthfulness. To the contrary, appellant testified that the Washington County Circuit Court did have jurisdiction over his case, and his witness testified that he understood the oath and what it meant to testify truthfully. During the testimony, the State did not attempt to show that appellant's organization required him to lie if he was in the "wrong" court or a court without jurisdiction. The State's line of questioning was improper under Rule 608, as it was not clearly probative of the appellant's truthfulness. The line of questioning was used to persuade the jury that, because of his political beliefs and association, appellant was the type of person who would be guilty of harassment and should be behind bars. The law of evidence does not presume that participation in a group that holds unconventional views manifests a propensity for truthfulness or untruthfulness. Examination into such matters is proper only where such associations are probative of a witness's truthfulness or untruthfulness under Rule 608.

Reversed.

Robbins, C.J., Rogers, Stroud, and Meads, JJ., agree.

Jennings, J., dissents.

John E. Jennings, Judge, dissenting.

The majority reverses Mr. Fowler's conviction of misdemeanor harassment on the basis that the circuit judge erred in permitting certain questions by the State on cross-examination. I respectfully dissent.

I have no disagreement with the view that a defendant's political beliefs are, generally speaking, irrelevant in a criminal prosecution. But the question in the case at bar is whether this defendant's beliefs were relevant on the issue of his credibility. His

credibility was crucial to the case because he testified at trial and not only denied harassing the complaining witness, but also relied on the defense of alibi.

Questions in the law of evidence differ from those involving substantive law. A question of substantive law may frequently be posed and answered in the abstract; issues involving the law of evidence must almost always be viewed in context. The trial court may have time to ponder questions of substantive law, but decisions on the admission of evidence must be made on the spot. It is said that the admission of evidence is a matter that lies within the sound discretion of the trial court. Bell v. State, 334 Ark. 285, 973 S.W.2d 806 (1998).

In the case at bar after the defendant had testified on direct, the State cross-examined:

Q Let me ask you, do your meetings, do you have discussions or talk about or deal with government matters at your meetings?

A No.

Mr. Bryant: Objection, irrelevant, beyond the scope of direct examination.

Mr. Franco: I think if I'm allowed to flush [sic] this out I'll try to be as absolutely brief as possible but I think that I can get to a point that will deal directly with his credibility.

The Court: Well, I think if this goes to credibility then I'll permit it for at least the time being. Overruled.

Continuing Cross-Examination by Mr. Franco:

Q Do you deal with matters relating to the government?

A No, sir, we deal with matters relating to constitutional documents.

Q Okay, do these, do you have discussions regarding the authority that governments or more specifically courts have over you?

A No, sir, we discuss citizen's rights.

Q All right. In the realm of dealing with the court system, more specifically the criminal justice system?

A Well, it's mainly the exercise of your rights, citizen's rights.

Q What are those citizen's rights?

A Well, that would be too much to enumerate.

Q Please answer the question?

Mr. Bryant: Your Honor, it's beyond me how this can have anything to do with the credibility of a witness.

The Court: Well, again, Counsel, I have addressed the objection. I'm going to permit it up to a point so overruled. Now, you may proceed.

Continuing Cross-Examination by Mr. Franco:

Q What are those citizen's rights which you deal with -- I'll narrow it for you, dealing just with the criminal justice system and the court system?

A Well, we don't confine it to that.

Q I want -- let's just confine the topic to that for purposes of your answering the question?

A Well, it's -- you know and I don't know if I can quote it exactly, one of your founding fathers said, vigilance, and I can't quote it exactly but vigilance is the exercise of freedom to keep a nation's citizens free so it's to make people aware of what the constitution is for and how that it is to work as a restraint against governmental abuses.

Q What governmental abuses?

A Well, I don't know, I feel strange you'd ask me that question as if you don't think there's ever been any governmental abuses.

Q Do you feel that you've ever been abused by the government yourself?

A I feel like that there has been an excess of it by the government, that and of course they're discussing this every day in the newspapers and this is what the courts are for is to try to work out the differences of people's opinions as to what is correctly judicial and what is not.

Q That flag right there has gold stripes on it; is that correct?

Mr. Bryant: Objection, Your Honor, may I approach please?

The Court: You may.

Mr. Bryant: Your Honor, the only thing the Prosecutor is trying to do in this case is prejudice the Jury against my client

because of his political beliefs. There's no way this has anything to do with the ability to tell the truth or not. This is an outrageous attempt on the Prosecutor's part to prejudice my client and I'd ask that he not be permitted to do that.

Mr. Franco: Throughout the entire prosecution of this matter Mr. Fowler has objected to the flag with gold stripes on it and stated it's military and doesn't have the authority over him, it's my understanding from his statement. I think if that's the belief here today I think it goes to, directly to the fact of if he thinks they have authority.

The Court: Well, you can narrow your question down to that particular issue which goes to credibility. I'm going to permit it but we need to narrow the scope of the inquiry and get on with it. All right. You may proceed.

By Mr. Franco:

Q What's the significance of the gold stripes on that flag right there?

A It shows that it's a military flag.

Q In your opinion, and?

A According to the studies that we have had, that's correct.

Q All right. What's that mean in your opinion if it's a military flag?

A Well, if -- now under, I'm quoting from the studies, all right.

Q Yes, sir, yes, sir?

A USC 1, I believe 4D, denotes the U.S. constitutional flag of America.

Q What type of flag is that supposed to be, what's the gold mean?

A It does not have a symbol on top.

Q The gold fringe means it's a military flag; is that correct?

A Yes, sir, according to army regulations, according to certain codes.

Q Is it your belief that if it's a military flag then there -- isn't it true that you're -- it's your belief that since we have military flag in the courtroom this is basically a military court and we don't have jurisdiction over you in this court, is that your belief?

A I understand that Reed versus Calvert says no U.S. citizen shall be tried in a military court.

Q Yes, sir?

A And President George Bush, and I don't remember the date right now, signed an executive order that all courts in the United States are military courts.

Q He did?

A He did.

Q Do you consider this to be a military court?

A I'm just telling you what the record is.

Q I'm asking do you consider this to be a military court?

A I don't know as I have an opinion. I'm telling you that's what I have read by executive order of a U.S. Supreme Court ruling.

Q One more question on this topic. Based upon your studies and the fact that's a military flag, you're not in the military; correct?

A Not now.

Q Do you feel that you are in the wrong court here today to be tried for the charges that have been brought against you?

A I'm here.

Q Do you feel by -- based upon your belief and your study that –

A Let me ask -- may I ask you a question?

The Court: Now wait a minute, wait a minute. This process is not going to work at all unless we follow some basic rules. Mr. Franco, you ask the questions and you respond to the questions if possible with either a yes or no and if you don't understand the question simply tell him and he will restate the question and maybe sometime before sunset this matter will come an end. Please try again to repeat the question and you just answer, you ask the question and you respond as briefly and succinctly as you possibly can hopefully with a yes or no and then we'll move ahead.

By Mr. Franco:

Q Based upon your study and your understanding of this executive order, do you feel that you are in the proper court yourself for the charges that have been filed against you?

A To the best of my study until I'm shown differently or can be proved differently I'm a U.S. citizen in one of the fifty states, I'm

under the U.S. Constitution of America as a free citizen, I'm not in the military and if it's correct according to the study that's a military flag, that flag denotes what court I'm under in this room.

Q So you, based upon your study you believe this to be a military court?

A According to George Bush.

Then, on redirect:

By Mr. Bryant:

Q Gerald, are you nervous about being here today?

A I'm totally relaxed.

Q Even though you may have a disagreement about whether or not that particular flag is the proper flag to be displayed in a courtroom, do you fully accept -- I mean what's your thoughts about this Court's jurisdiction over you, do you accept that?

A Yeah, I have accepted it.

Q And what are your thoughts about the role of the Jury here today?

A I think that's a great American way.

Nick Herrington was an alibi witness for the defendant. The following transpired during the State's cross-examination:

Q Your meetings out there, what type meeting is that?

Mr. Bryant: Object, Your Honor, beyond the scope of direct examination.

Mr. Franco: He said he was at the meeting. I think he opened the door.

The Court: Well, I really fail to see how it's relevant to these proceedings, Counsel. If you can tie it into something, I'll permit a few questions.

Mr. Franco: It's just like when we did Mr. Fowler, I'll get right to the point.

By Mr. Franco:

Q You notice the flag over there?

A Yes, sir.

Q What sticks out on that flag to you?

A A variety of things.

Q What about the gold fringe around the flag?

A Indicates military law.

Q What does that mean to you?

A It's not common law.

Q Okay, it's not common law?

A No, sir it's not.

Q The law that we're doing in court here today, the trial we have is a criminal trial?

A Yes, sir.

Q What type of law is this we're doing here today?

A That flag indicates military law.

Q In your opinion is this a military court?

A Not my opinion.

Q Whose opinion?

A Title 4, U.S. Code, Section 102, which defines the flag, Title 36, U.S. Code 71-73, which goes further into the flag, Army Regulation 840-10, that really gets into it, Chapter 8.

Q Do you believe that Mr. Fowler is in the right court today for the charges for, he's been charged with, a violation of state law –

Mr. Bryant: Your Honor, this is all very interesting.

The Court: Overruled, it goes to credibility. I'm going to permit it. Overruled.

By Mr. Franco:

Q You believe Mr. Fowler is in the correct court today based upon the flag that's here and he's charged with a crime under the laws of the State of Arkansas?

A How you define a crime –

Q The crime of harassment, he's charged with the crime of harassment?

A Well –

Q It's a yes or no question, do you believe he's in the right court?

A I don't know.

Q Do you -- you're here as a witness in this court today and I think you took an oath, you were sworn in; is that correct?

A Yes, sir.

Q Does the fact that you're under that flag, you don't -- let me back up just a second, you believe that that's the wrong flag to be in this courtroom, correct?

A We don't have a complete set of flags here, let's put it that way.

Q What other flag is missing then if that flag is flying?

A The American flag of peace means Old Glory is present, do you see it?

Q So we have the right flag?

A You don't have a complete set.

Q Based upon that do you believe that you're bound by the authority of this court here today?

A I'm a witness here.

Q Well, do you believe based upon your belief that Mr. Fowler is bound by the authority of this court?

A Yes, he's got an attorney.

Q No, let me restate my question. Do you believe that Mr. Fowler is bound by the authority of this court, that he comes under the authority of this court based upon what you have talked about, the flag and stuff –

Mr. Bryant: Your Honor, how is the witness supposed to testify as to what Mr. Fowler believes? I believe that's improper.

The Court: That wasn't the question. The question was does this witness believe that Mr. Fowler is bound by the authority of this court, which I assume goes to his belief in this system which to some extent has something to do with his credibility. I think if he can narrow the issue to one of credibility I'm going to permit the inquiry and please, let's move along.

Mr. Franco: That's the last question I have, Your Honor, and that's exactly what I'm asking about.

By Mr. Franco:

A If he didn't believe he was bound he wouldn't be here.

Then, on redirect:

By Mr. Bryant:

Q Mr. Herrington, understand what it means to take an oath to tell the truth?

A Yes, sir.

Q Are you bound by that oath here today?

A Yes, sir.

Generally speaking, whether evidence is admissible depends upon whether it is likely, all things considered, to advance the search for the truth. Gist v. Meredith Marine Sales & Serv., 272 Ark. 489, 615 S.W.2d 365 (1981); Ark. R. Evid. 102. Also as a general rule, all relevant evidence is admissible. Ark. R. Evid. 402.

The credibility of any witness is always at issue and always important. This is why our courts have held that the bias of a witness is not a collateral matter. Goodwin v. State, 263 Ark. 856, 568 S.W.2d 3 (1978); Hackett v. State, 2 Ark. App. 228, 619 S.W.2d 687 (1981). In Koch v. Koch Industries, Inc., 2 F. Supp. 2d 1385 (D. Kan 1998), the court said:

> Although not specifically mentioned in the Rules, proof of bias, that is, any evidence of a relationship, circumstance or motivation which might lead a witness to slant, unconsciously or otherwise, his testimony is almost always relevant. A successful showing of bias on the part of a witness would have a tendency to make the facts to which he testified less probable in the eyes of the jury than it would be without such testimony. Courts generally are liberal in admitting evidence of bias because a jury must be sufficiently informed of the underlying relationships, circumstances, and influences operating on the witness to determine whether a modification of testimony reasonably could be expected as a probable human reaction. Proof of a witness's motivation or potential bias is critical when the witness is a party and key witness to the alleged events. The range of evidence that may be elicited for the purpose of establishing bias of a witness is quite broad.

(Quotation marks and citations omitted.) Id. at 1389.

Here the State successfully elicited from Mr. Fowler his view that the flag in the courtroom was a military flag; that Reed v. Calvert says that no United States citizen shall be tried in a military court; and that President Bush signed an executive order that all courts in the United States are military courts. From Mr. Herrington the State elicited his view that the flag in the trial court was not

"common law" but indicated military law; that the United States Code stated that the trial court was a military court; and that Herrington was uncertain that Mr. Fowler was in the right court. It is true, as the majority says, that the State did not obtain an admission from either witness that he was prepared to lie because he was in the wrong courtroom. Nevertheless, the evidence elicited was circumstantial evidence bearing on the witnesses' credibility.

The man who believes that he is under no legal or moral obligation at all times and under all circumstances to tell the truth under the sanction of a oath has destroyed the only test by which he can claim credit at the hands of men. Such evidence is not establishing a bad character from particular facts. Wigmore, Evidence § 957 (Chadbourn Rev. 1979) quoting from Anonymous, 19 SCL (1 Hill) 251, 252 (1833). Any material fact may be established by circumstantial evidence. Pitts v. Greene, Administrator, 238 Ark. 438, 382 S.W.2d 904 (1964). The fact that evidence may be of only slight relevance is not a basis for its exclusion. See Dooley v. Cecil Edwards Const. Co., 13 Ark. App. 170, 681 S.W.2d 399 (1984).

The importance of cross-examination as an engine for truth is well known. While the State is not entitled to the benefit of the confrontation clause, like any other litigant it is entitled to the right of cross-examination. The cross-examiner is given wide latitude, particularly in matters relating to the witness's credibility. Gustafson v. State, 267 Ark. 830, 593 S.W.2d 187 (1979); Shaver v. State, 37 Ark. App. 124, 826 S.W.2d 300 (1992). A broad view of cross-examination is especially important where it might reveal bias on the part of a key witness. Wilson v. State, 289 Ark. 141, 712 S.W.2d 654 (1986). The trial judge has considerable discretion in determining the scope of cross-examination. Boreck v. State, 277 Ark. 72, 639 S.W.2d 352 (1982). In Davis v. Alaska, 415 U.S. 308 (1974), Chief Justice Burger, speaking for the Court, said:

> Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is

not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness. . . . A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and affecting the weight of his testimony.

Id. at 316 (citation omitted).

And in State v. Elijah, 289 N.W. 575 (Minn. 1940), the Minnesota Supreme Court said:

> Cross-examination is an agency for the development of truth in judicial inquiries. Its chief purpose is to enable the trier of fact to determine what evidence is credible and what is not. For that purpose it is important to show the relation of the witness to the cause and the parties, his bias or interest or any other fact which may bear on his truthfulness. . . . Cross-examination to show the bias, prejudice, interest or disposition of the witness to tell the truth is a matter of right, the exercise of which is indispensable to show the truth. The authorities cited supra that a party has a right to show the bias or interest of a witness hold without exception that the denial of the right is prejudicial and error. . . . It is the essence of a fair trial that reasonable latitude be given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop. Prejudice ensues from the denial of the opportunity to place the witness in its proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them.

Id. at 578-79 (citations omitted).

I am not insensitive to the view that one's political beliefs are entitled to protection from unwarranted inquiry. Nevertheless, the Constitution does not erect a per se barrier to the admission of evidence concerning one's beliefs and associations. Dawson v. Delaware, 503 U.S. 159 (1992). If one's political beliefs are relevant, evidence concerning them is admissible. United States v. Myers, 410 F.2d 693 (2nd Cir. 1969). See also, McKnight v. State, 874 S.W.2d 745 (Tex. App. 1994).

Although the majority mentions Rules 403, it does not decide the case on that basis. Indeed, it could not because the Rule 403 weighing issue was neither raised nor ruled upon at trial. See Hill v. State, 325 Ark. 419, 931 S.W.2d 64 (1996). Nor is the issue raised on appeal.

The court instead decides the case on the basis of Rule 608. This is simply not a Rule 608 case. The State was not attempting to impeach the witnesses' credibility by proving specific instances of conduct -- it was trying to establish that the defendant and his witness did not believe the Washington County Circuit Court had authority to try the case and thus cast doubt upon their obligation to tell the truth under oath. Rhodes v. State and Green v. State, cited by the majority, are not applicable here.

While the majority mentions United States v. Abel, 469 U.S. 45 (1984), it does not take to heart its lessons. In Abel, the Ninth Circuit Court of Appeals had held that a suggestion of perjury, based upon a group tenet, was impermissible. The Circuit Court said:

> Neither should the government be allowed to impeach on the grounds of mere membership, since membership, without more, has no probative value. It establishes nothing about the individual's own actions, beliefs, or veracity.
>
> The United States Supreme Court, in a unanimous opinion, reversed. The Court recognized that the Federal Rules of Evidence (like the Arkansas Rules of Evidence) do not specifically deal with impeachment for "bias" and that this is a separate matter from impeachment by conduct under Rule 608. The Court found, however, that the right to impeach

on this basis survived the adoption of the Federal Rules. The Court recognized the importance of cross-examination on "matters affecting the credibility of the witness." It said:

> Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony.

Abel, 469 U.S. at 52. The Court rejected the appellant's 608(b) argument.

The majority concludes that the State's "line of questioning was used to persuade the jury that, because of his political beliefs and association, appellant was the type of person who would be guilty of harassment and should be behind bars." While there is some chance that the majority may be right, I see no reason to doubt the prosecutor's statement to the trial court that he believed that the line of questioning went to the credibility of the witnesses.

To sum up, my conclusions are: (1) that the credibility of the defendant and his alibi witness was central to the resolution of the case; (2) that the questioning was relevant on the issue of the witnesses' credibility; (3) that the trial court was obliged to allow considerable leeway on cross-examination; (4) that there is no per se bar regarding inquiry into one's political beliefs;(5) that Rule 608 has no bearing on the case; (6) that the trial court had considerable discretion in permitting the inquiry; and (7) that appellant has demonstrated no abuse of that discretion. Therefore, I respectfully dissent.

EXCERPTS FROM STATE'S VOIR DIRE BY MR. FRANCO:

MR. FRANCO: The last thing I want to talk about just briefly, I want to ask if anybody has an affiliation with or is a member of a group or has beliefs that the State of Arkansas or the Court has no authority over them?

REPORTER'S NOTE: No audible response from the Jurors.

MR. FRANCO: Does anyone believe that based upon your beliefs and your understanding of certain laws that this Court doesn't have any authority over you, that you're not subject to the laws of the State of Arkansas? Anyone affiliated with a group or know someone that is?
REPORTER'S NOTE: No audible response from the Jurors.

EXCERPTS FROM OPENING STATEMENT BY MR. FRANCO:

If it's not obvious now it will be painfully obvious before we get done today that this is the first jury trial I've ever done and I want to ask that you all bear with me and don't hold my lack of, of polish and lack of smoothness against my case or the State because the evidence is there and I will get it out but I may stutter and stammer a few times and I ask you to do that because as in all cases the most important thing here today is the evidence and paying attention to the evidence and this is -- this can be a hard case and it can be a hard case because as it's been intimated through the voir dire process you're going to have a story over here on this side and you're going to have a story over here on this side and I don't think throughout the entire day, the entire trial today they're ever going to meet and it's basically one side saying this and the other side saying that and fortunately for me and unfortunately for you, you guys have to go back and decide which story has got it right, you have to decide who's more credible and what I mean who's more credible, I want to talk about not who's telling the truth and who's lying maybe but who's got it right, who's got the right story, who's in the right place, who knows what went on. I said that can be hard but it can be made easy, I think very easy if you will do two things for me today, if you will do two things. Listen to all the evidence is the first thing you do and all the evidence I think mainly is going to be testimony and when you listen to the people testify today the first thing you do is ask yourself why, why is this person testifying this way, why did she say that, why are you doing this and when you ask yourselves why, what does this person have to lose or what's their motivation, you ask them why is this person testifying this way, the other thing on

each and every person that testifies, the only and second thing you need to do is ask what, what are they saying and encompassing this is what have they seen, what did they not see, what they got to gain and what they got to lose. If you will ask yourselves why are they saying that and what are they saying for each piece of evidence here today, it will be just as obvious to you as I think it is to me that Fowler, Gerald Fowler committed the crime of harassment. The evidence will show you that Mr. Fowler taught or was some part of some type of classes at the Jones Center, he met out there once a week and when he wasn't meeting out there he was out there walking on the track or whatever. Helen Wright will testify today and she was the victim in this, she will testify she was a receptionist out there and that over a period of two or three months Mr. Fowler becomes I want to say a pest but it's a little more than that because he frightened her, he upset her and he scared her. . . . When you have listened to their evidence and when you've watched them testify and you ask yourselves why are they saying this, what did they see, and then you hear the defense put on their testimony and the statements and evidence that they're going to give through all their witnesses and you ask yourselves why are they saying that, what is this person's motivation and you ask yourself what did that person see, it will be, become clear to you that the more credible story, the people that have got it right are Helen Wright and her daughter, the State's case, and we will prove beyond a reasonable doubt that Mr. Fowler harassed Helen Wright. . . . . Judge the witnesses by asking these two questions every time you hear them testify and you will see that it's very clear.

EXCERPTS FROM OPENING STATEMENT BY MR. BRYANT:

. . . . . Now, I hadn't really wanted to get into this but I feel kind of obligated to. Gerald had known Helen for a while, these meetings that Gerald went to was a bunch of his friends, kind of his I guess church-goers for lack of a better term, and he'd run into Helen, he'd talk with her on occasion and tell Helen, share his beliefs with her, and she was excited about this, he will tell you this, she was excited,

they had long conversations on many occasions about their religious beliefs just as if, you know, you or your pastor or someone is going to go out and witness to someone in the community, very simple, innocent conversations. However, there comes a point for Helen, whatever reason and I don't know, really know, I'm not sure you will when it's all said and done but for whatever reason Helen decides I don't think I want Gerald talking to me so she tells some people, she tells -- Steve Cobb is going to testify, the security officer there, and he tells Gerald, Gerald, you got to leave her alone and I -- they called the police and filed a report and that's how, like the Prosecutor told you, how the Judge said okay, here's an official thing, now you leave her alone, Gerald. That's fine. Gerald did that, he leaves her alone until this night when he goes home and checks his messages but Helen says he was following her. Helen is going to tell you she left the Jones Center with her daughter and that she was sitting at a traffic light not too far up the road from there when she glances over next to her and saw a dark-colored van, I believe that's what she's going to testify, that's what she said before, and she says that she looked over and sees this guy staring at her and she looks back and waits for the light to change and goes on. She's going to tell you she thinks she was followed by this van all the way from the Jones Center on up, I know some of you are from Springdale and familiar with this area, all the way basically to the north side of Springdale over to 71, up to Apple Blossom Road which is way up there, and her daughter is going to tell you the same thing, her daughter is with you and you will hear the daughter testify, you'll get the opportunity to see what you think about all that.

EXCERPTS FROM DIRECT EXAMINTATION OF STATE'S WITNESS STEPHEN COBB BY MR. FRANCO:

Q When did you speak with him?
A September the 20th.
Q Was that the first time you ever had to deal with Mr. Fowler as the security guard?
A Yes, sir.
Q What were you having to talk to him about?

A I was coming back from locking and unlocking some doors. Mr. Fowler was visiting with Ms. Wright at the desk along with some other people that were there. I come through to go into the security office and Ms. Wright said hey, have you ever heard of something that they were talking about, heaven, you know, and I didn't have time at the moment to get into it with them so I said, you know, I'm too busy right now and I just kept on going to the security office and then they -- after I guess Mr. Fowler had left and Ms. Wright and some of the other people approached me and was telling me what was going on and explaining what the discussion was about and give me a note that he had given her at one point in time.
[Transcript page 70]

* * *

Q All right. Tell us about that second time? First, when in relation, how long between the first time and the second time?
A Probably a few weeks.
Q Okay?
A Later -- I had told Mr. Fowler that first time, you know, to leave her alone, not bother her kind of thing and the next time I was working Helen got -- Ms. Wright got a phone call and it was Mr. Fowler and he was calling and asking her a bunch of questions that was really bizarre and just to hear her voice or something I guess.
[Transcript page 73]

* * *

Q What did you do?
A Well, I got on the phone with Mr. Fowler and told him that - I reminded him that I had told him not to be messing with her, you know, and bothering her and he was, he was doing it again so he was going on with his religious things and he was just doing this and this and this and so I just hung up on him because I didn't want to get into it, hearing all this and then--
Q Tell me about what all he [Mr. Fowler] was saying to you, what did he say to you when you got on the phone with him?
A He was not harassing her or stalking her, that he was just talking to her about religion.
Q What was his demeanor on the phone?
A Matter of fact.

Q Matter of fact?
A Not mad, not irate.
[Transcript page 74]

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EXCERPTS FROM CROSS-EXAMINATION OF STATE'S WITNESS STEPHEN COBB BY MR. BRYANT:

Q Okay, you have a little bit different, maybe radically different beliefs than Gerald's; don't you?
A I mean--
Q I mean as far as--
MR. FRANCO: Object to the relevance.
THE COURT: Sustained.
[Transcript page 78]

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EXCERPTS OF DIRECT EXAMINATION OF STATE'S WITNESS HELEN WRIGHT BY MR. FRANCO:

Q Up to September right before you decided you needed to report him for whatever reason, what was going on between the two of you, how was he acting toward you?
A Well, he would just come in and just sit, I mean after walking, he would walk on a regular basis through the Jones Center on a daily basis on the evenings and just come to me and just talk religion, talk that I have no idea what it was about, even like one incident was like to the seven, book of seven seals and it carried on where he'd tell me scriptures in the Bible and I'd look at them and open the Bible when I got home and there was never no such thing in there that I even understood because, you know, I'm a Christian person but to that point there was nothing led to it.
Q Did you ask him to, did you say hey, Mr. Fowler, tell me about your religion?
A I never once told him to come to me to talk to me about the religious stuff ever.
Q Did you ask him questions about it?

A I never once asked him a question about the religion. The only thing I said to him was for him to stop, to stop talking religion because I have a job to do.
[Transcript page 81-82]

* * *

Q Okay, what happened when you clicked over to the call waiting, what was the first thing he said?
A He said get a piece of paper and a pen and I said for what and he said I want you to write down my name and address. I recognized the voice from the Jones Center because he come up continually and he called on several occasions also, he did at the Jones Center and talked to me, asking me just silly questions, I can't even recall all of them. Of course I did not get a paper and pen, I just pretended I did and I said I have got to go, I have got my sister talking long distance and ~ ain't got time for this and I just hung up and I so scared and frightened I was that I just didn't know what to do or how to act, I mean it was just scary, that I couldn't figure out how he got my phone number or how he even knew any husband's name because it was listed under that and that was a scary thought.
[Transcript page 84]

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EXCERPTS OF CROSS-EXAMINATION OF STATE'S WITNESS HELEN WRIGHT BY MR. BRYANT:

Q Okay, you thought Gerald had a, what was it, creepy religion, is that how you phrased it?
A No, It was not, just different, just different.
Q Okay, different, he was talking about religious things?
A Something that I did not understand.
Q Talking about stuff out of Revelations and all the seventh seal and stuff like that?
A Yes, sir.
[Transcript page 99]

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EXCERPTS OF CROSS-EXAMINATION OF DEFENDANT GENE FOWLER BY MR. FRANCO:

Q The meetings that you have, what are the meetings about?
A Well, the meetings are about alternative energy, we're called Community Improvement, we have a product or I don't know what you call it, called Sonic Boom, it's a specially developed fertilizer.
Q Let me ask you, do your meetings, do you have discussions or talk about or deal with government matters at your meetings?
A No.
MR. BRYANT: Objection, irrelevant, beyond the scope of direct examination.
MR. FRANCO: I think if I'm allowed to flush this out I'll try to be as absolutely brief as possible but I think that I can get to a point that will deal directly with his credibility.
THE COURT: Well, I think if this goes to credibility then I'll permit it for at least the time being. Overruled.
Q Do you deal with matters relating to the government?
A No, sir, we deal with matters relating to constitutional documents.
Q Okay, do these, do you have discussions regarding the authority that governments or more specifically courts have over you?
A No, sir, we discuss citizen's rights.
Q All right. In the realm of dealing with the court system, more specifically the criminal justice system?
A Well, it's mainly the exercise of your rights, citizen's rights.
Q What are those citizen's rights?
A Well, that would be too much to enumerate.
Q Please answer the question?
MR. BRYANT: Your Honor, it's beyond me how this can have anything to do with the credibility of a witness.
THE COURT: Well, again, Counsel, I have addressed the objection. I'm going to permit it up to a point so overruled. Now, you may proceed.
CONTINUING CROSS EXAMINATION BY MR. FRANCO:
Q What are those citizen's rights which you deal with -- I'll narrow it for you, dealing just with the criminal justice system and the court system?
A Well, we don't confine it to that.
Q I want -- let's just confine the topic to that for purposes of your answering the question?

A Well, it's -- you know and I don't know if I can quote it exactly, one of your founding fathers said, vigilance, and I can't quote it exactly but vigilance is the exercise of freedom to keep a nation's citizens free so it's to make people aware of what the constitution is for and how that it is to work as a restraint against governmental abuses.

Q What governmental abuses?

A Well, I don't know, I feel strange you'd ask me that question as if you don't think there's ever been any governmental abuses.

Q Do you feel that you've ever been abused by the government yourself?

A I feel like that there has been an excess of it by the government, that and of course they're discussing this every day in the newspapers and this is what the courts are for is to try to work out the differences of people's opinions as to what is correctly judicial and what is not.

Q That flag right there has gold stripes on it; is that correct?

MR. BRYANT: Objection, Your Honor, may I approach please?

THE COURT: You may.

REPORTER'S NOTE: Attorneys at the bench out of the hearing of the Jury.

MR. BRYANT: Your Honor, the only thing the Prosecutor is trying to do in this case is prejudice the Jury against my client because of his political beliefs. There's no way this has anything to do with the ability to tell the truth or not. This is an outrageous attempt on the Prosecutor's part to prejudice my client and I'd ask that he not be permitted to do that.

MR. FRANCO: Throughout the entire prosecution of this matter Mr. Fowler has objected to the flag with gold stripes on it and stated it's military and doesn't have the authority over him, it's my understanding from his statement. I think if that's the belief here today I think it goes to, directly to the fact of if he thinks they have authority.

THE COURT: Well, you can narrow your question down to that particular issue which goes to credibility. I'm going permit it but we need to narrow the scope of the inquiry and get on with it. All right. You may proceed.

REPORTER'S NOTE: Back within the hearing of the Jury.
CONTINUING CROSS EXAMINATION
BY MR. FRANCO:
Q What's the significance of the gold stripes on that flag right there?
A It shows that it's a military flag.
Q In your opinion, and?
A According to the studies that we have had, that's correct.
Q All right. What's that mean in your opinion if it's a military flag?
A Well, if -- now under, I'm quoting from the studies, all right.
Q Yes, sir, yes, sir?
A USC 1, I believe 4D, denotes the U.S. constitutional flag of America.
Q What type of flag is that supposed to be, what's the gold mean?
A It does not have a symbol on top.
Q The gold fringe means it's a military flag; is that correct?
A Yes, sir, according to army regulations, according to certain codes.
Q Is it your belief that if it's a military flag then there - isn't it true that you're -- it's your belief that since we have military flag in the courtroom this is basically a military court and we don't have jurisdiction over you in this court, is that your belief?
A I understand that Reed versus Calvert says no U.S. citizen shall be tried in a military court.
Q Yes, sir?
A And President George Bush, and I don't remember the date right now, signed an executive order that all courts in the United States are military courts.
Q He did?
A He did.
Q Do you consider this to be a military court?
A I'm just telling you what the record is.
Q I'm asking do you consider this to be a military court?
A I don't know as I have an opinion. I'm telling you that's what I have read by executive order of a U.S. Supreme Court ruling.
Q One more question on this topic. Based upon your studies and the fact that's a military flag, you're not in the military; correct?
A Not now.

Q Do you feel that you are in the wrong court here today to be tried for the charges that have been brought against you?
A I'm here.
Q Do you feel by -- based upon your belief and your study that--
A Let me ask -- may I ask you a question?
THE COURT: Now wait a minute, wait a minute. This process is not going to work at all unless we follow some basic rules. Mr. Franco, you ask the questions and you respond to the questions if possible with either a yes or no and if you don't understand the question simply tell him and he will restate the question and maybe sometime before sunset this matter will come an end. Please try again to repeat the question and you just answer, you ask the question and you respond as briefly and succinctly as you possibly can hopefully with a yes or no and then we'll move ahead.
CONTINUING CROSS EXAMINATION BY MR. FRANCO:
Q Based upon your study and your understanding of this executive order, do you feel that you are in the proper court yourself for the charges that have been filed against you?
A To the best of my study until I'm shown differently or can be proved differently I'm a U.S. citizen in one of the fifty states, I'm under the U.S. Constitution of America as a free citizen, I'm not in the military and if it's correct according to the study that's a military flag, that flag denotes what court I'm under in this room.
Q So you, based upon your study you believe this to be a military court?
A According to George Bush.
[Transcript page 165-172]

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EXCERPTS OF REDIRECT EXAMINATION OF DEFENDANT GENE FOWLER BY MR. BRYANT:

Q Even though you may have a disagreement about whether or not that particular flag is the proper flag to be displayed in a courtroom, do you fully accept -- I mean what's your thoughts about this Court's jurisdiction over you, do you accept that?
A Yeah, I have accepted it.
Q And what are your thoughts about the role of the Jury here today?
A I think that's a great American way.

[Transcript page 175-176]

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EXCERPTS OF CROSS-EXAMINATION OF DEFENSE WITNESS NICK HERRINGTON BY MR. FRANCO:

Q Your meetings out there, what type meeting is that?
MR. BRYANT: Object, Your Honor, beyond the scope of direct examination.
MR. FRANCO: He said he was at the meeting. I think he opened the door.
THE COURT Well, I really fail to see how it's relevant to these proceedings, Counsel. If you can tie it into something, I'll permit a few questions.
MR. FRANCO: It's just like when we did Mr. Fowler, I'll get right to the point.
CONTINUING CROSS EXAMINATION BY MR. FRANCO:
Q You notice the flag over there?
A Yes, sir.
Q What sticks out on that flag to you?
Q What about the gold fringe around the flag?
A Indicates military law.
Q What does that mean to you?
A It's not common law.
Q Okay, it's not common law?
A No, sir it's not.
Q The law that we're doing in court here today, the trial we have is a criminal trial?
A Yes, sir.
Q What type of law is this we're doing here today?
A That flag indicates military law.
Q In your opinion is this a military court?
A Not my opinion.
Q Whose opinion?
A Title 4, U.S. Code, Section 102 which defines the flag, Title 36, U.S. Code 71-31, which goes further into the flag, Army Regulation 840-10, that really gets into it, Chapter 8.

Q Do you believe that Mr. Fowler is in the right court today for the charges for, he's been charged with, a violation of state law--
MR. BRYANT: Your Honor, this is all very interesting.
THE COURT: Overruled, it goes to credibility. I'm going to permit it. Overruled.
CONTINUING CROSS EXAMINATION BY MR. FRANCO:
Q You believe Mr. Fowler is in the correct court today based upon the flag that's here and he's charged with a crime under the laws of the State of Arkansas?
A How you define a crime --
Q The crime of harassment, he's charged with the crime of harassment?
A Well--
Q It's a yes or no question, do you believe he's in the right court?
A I don't know.
Q Do you -- you're here as a witness in this court today and I think you took an oath, you were sworn in; is that correct?
A Yes, sir.
Q Does the fact that you're under that flag, you don't -- let me back up just a second, you believe that that's the wrong flag to be in this courtroom, correct?
A We don't have a complete set of flags here, let's put it that way.
Q What other flag is missing then if that flag is flying?
A The American flag of peace means Old Glory is present, do you see it?
Q So we have the right flag?
A You don't have a complete set.
Q Based upon that do you believe that you're bound by the authority of this court here today?
A I'm a witness here.
Q Well, do you believe based upon your belief that Mr. Fowler is bound by the authority of this court?
A Yes, he's got an attorney.
Q No, let me restate my question. Do you believe that Mr. Fowler is bound by the authority of this court, that he comes under the authority of this court based upon what you have talked about, the flag and stuff--

MR. BRYANT: Your Honor, how is the witness supposed to testify as to what Mr. Fowler believes? I believe that's improper.
THE COURT: That wasn't the question. The question was does this witness believe that Mr. Fowler is bound by the authority of this court, which I assume goes to his belief in this system which to some extent has something to do with his credibility. I think if he can narrow the issue to one of credibility I'm going to permit the inquiry and please, let's move along.
MR. FRANCO: That's the last question I have, Your Honor, and that's exactly what I'm asking about.
CONTINUING CROSS EXAMINATION BY MR. FRANCO:
A If he didn't believe he was bound he wouldn't be here.
MR. FRANCO: That's all I have.
THE COURT: Re-direct?
MR. BRYANT: Very briefly, Your Honor.

REDIRECT EXAMINATION OF DEFENSE WITNESS NICK HERRINGTON BY MR. BRYANT:

Q Mr. Herrington, understand what it means to take an oath to tell the truth?
A Yes, sir.
Q Are you bound by that oath here today?
A Yes, sir.
MR. BRYANT: Thank you.
THE COURT: Anything else?
MR. FRANCO: Nothing.
MR. BRYANT: None.
[Transcript page 195-199]

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JURY INSTRUCTION NO. 9:

Gerald Fowler is charged with harassment. To sustain this charge the State must prove beyond a reasonable doubt that Gerald Fowler with the purpose to harass or annoy or alarm another person without good cause he follows a person in or about a public place or engaged in conduct or repeatedly commits acts that alarm or seriously annoy

another person and that serve no legitimate purpose. A person acts with purpose with respect to his or her conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

EXCERPTS FROM STATE'S CLOSING ARGUMENT BY MR. FRANCO:

. . . . Ask yourselves why are they testifying this way. I submit they're also biased. I'll submit to you that they don't think they're in the right court, they don't agree with a lot of the stuff we're doing here today. We have this big diatribe about the flag. I'm not sure that I understand all that stuff about the flag but I state to you that these people don't believe that they're in the right court. I think these people don't think that we have any authority over them, the State of Arkansas, the City of Springdale in this case, and I think they don't think they owe us any sort of duty to come in here and tell us anything other than what they want, their friend and the guy they go to these meetings with every Thursday night to talk about whatever they talk about to get out of here, to walk out of here, I submit that to you. When you ask yourself why, when you say what did they see, I have never seen two people or I have -- how can they be so sure of theirselves on the stand and then the exact opposite comes from over here? . . . . . I submit to you that Mr. Fowler himself doesn't hold -- does not grant this Court the authority he thinks it should have, he doesn't think it has any authority over him, he sure as heck thumbed his nose at the Springdale Municipal Court and I think the evidence proves that and I think that he's thumbed his nose at us, too, and think the more credible story is the story of what really happened out there, comes from Ms. Wright.

EXCERPTS OF DEFENSE CLOSING ARGUMENT BY MR. BRYANT:

Just about over, ladies and gentlemen. I appreciate ya'll paying attention here today and listening to all the evidence, listening to all the witnesses. I want to make sure we understand one thing, we're

here to decide one thing today and one thing only you basically have to decide when you get back there is whether or not Gerald Fowler followed Helen Wright on October the 9th after she left work that evening. We're not here to decide anything else, anything as far as anything that happened before that, anything that as far as differing views, as far as whether the flag should have gold fringe or not, it doesn't matter. October the 9th did Gerald Fowler follow her. Yes, you have this, you're going to look at it, he had been told to leave Helen alone. That's fine. He did that. For driving so that's the last time that she sees the dark colored mini van all the way up here. You heard Gerald Fowler testify, like him or not, whether or not you believe the way he does or whether or not you have the same religious convictions, whether or not you have the same belief about what kind of fringe that flag should have on it or what. . . . .You know there was some -- I think it was some attacks made on the credibility because they believed in a different flag and what not. Ladies and gentlemen, I contend that that's not an attack on credibility, that's an attack or persecution for having beliefs different than that of the State. There's not a law against that, that's the great thing living in this country, and don't, please, please don't go back into the juryroom and find Gerald Fowler guilty just because you don't like what he believes.